David Edmonds

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My remarks today will attempt to weave together some regulatory philosophy with some commercial practicality.

To set out the approach of my Board to the legal services reform programme, I'll say a little about how we see the development of the landscape, as well as on opportunities that might emerge from it for innovative firms.

But, first, a reminder on the role played by my Board in the sector.

The Legal Services Act 2007, passed by Parliament with cross-party support, established a major and historic set of reforms to legal services in England and Wales.

This emerged from concern over long-standing anti-competitive practices in the sector - the impact of which was felt to have adversely affected the interests of consumers.

The Act created the LSB as the oversight regulator in the sector, sitting at the top of a framework that included the existing frontline regulators - including the Law Society and its regulatory arm, the SRA.

Our initial priorities have been:

- To embed independent governance and high standards of performance amongst the regulators;

- To open up the market through Alternative Business Structures; and

- To establish a new complaints-handling regime led by the Legal Ombudsman, which opened its doors earlier this month.

A good deal of progress has been made against each of these initial objectives.

Approach to regulation

So that's the structure and our place in it.

But I'd like to begin my substantive points by setting out our approach to regulation.

The unreformed regulatory framework found itself undermined by three major failings:

- Firstly, it had not kept pace with the changing environment.

  Technological improvements, advances in service industries and a faster-moving world had changed consumer expectations on the service they expected from lawyers.

- Secondly, the rules tended to unnecessarily restrict lawyers' ability to reshape their service to meet these changed expectations.

- Thirdly, as some started to find ways to get around these rules in order to meet demand, the nature of risk changed.

  However, regulators' capacity for identifying and tackling risk failed to evolve appropriately alongside it.

  This had the effect of damaging consumer protection in the industry.

In short, a rebalancing was needed between appropriate consumer protection and allowing innovation in the ways that legal services are provided.

This is the core of the challenge for regulators: we need to free providers to deliver in innovative ways that respond to demand, whilst also ensuring standards in consumers' experience from beginning to end.

In cases where the service has fallen short and redress is appropriate, that assurance needs to continue beyond the end.

This requires a new approach to managing risk, greater flexibility in business models and proportionate responses from regulators where intervention is needed.

Opening up the market

Removing unnecessary ownership restrictions has been a key strand of opening up the market.

For centuries, legislation and regulation has tightly restricted the management, ownership and financing of firms providing legal services. This has created unnecessary limitations on how they can service consumers.

Permitting new ‘Alternative Business Structures’ (ABS) will mean that consumers can expect more choice, better value and more responsive services from a market-place open to diverse models.

Whether this is through a multi-disciplinary partnership offering legal advice alongside other professional services; or a law firm floated on the stock exchange to attract external capital, the removal of restrictions will stimulate innovation.

Practitioners will be able to deliver their services in different ways to meet changed consumer expectations. New entrants will bring new skills and working practices into the sector.

Importantly, regulation will catch up with the real world, where new ways of working are already being employed.

Consumer protections

The timeline for the development of ABS has been an ambitious one, but it is one that we have stuck to firmly.

We will see the first ABS open its doors for trading on 6 October 2011, with the SRA and the CLC making their formal applications to become Licensing Authorities over the next few months.

It is not the business of regulators to make predictions as to the future shape of the market.

But that doesn't mean we won't be keeping a close eye on monitoring.

Part of our current work is developing the impact assessment and post-implementation measurement framework so we can track and assess the impact of changes in the market.

In developing the licensing framework we have sought to achieve that importance balance between supporting innovation whilst ensuring consumer protections.

We have listened carefully to concerns raised over the independence of lawyers.

I know that many practitioners want reassurance that the same ethical safeguards will be placed at the heart of ABS governance as those expected of lawyers acting within law firms.

I understand those concerns.

But I would, at the same time, highlight the example of existing in-house practitioners as illustrations of how they can be overcome.

In my professional experience, having worked in large and complex organisations which employ the services of lawyers, I came to expect the same standards of robust and

independently-minded advice from internal lawyer colleagues as I would have anticipated from those working in an external firm on retainer.

Nevertheless, our work in building the licensing framework has sought to put ethical principles on an institutional footing.

Three robust consumer protections that we are putting in place to deliver this include the following:

- A test to ensure that non-lawyer owners of an ABS are fit and proper;

- The introduction of two new roles within an ABS: the Head of Legal Practice and the Head of Finance and Administration, who will be the lead positions on ensuring compliance with licensing conditions; and

- A widening of the complaints-handling system to deal with complaints from multi-disciplinary practices – therefore extending to cover ABS delivering legal advice alongside other professional services.

It is my strong view that consumers will expect the same level of independence, critical thinking and impartiality of advice from lawyers within ABS as they would from traditional law firms.

Commercial flexibility and innovation

One of the core principles in the approach of my Board to new business models is that there must be a level playing field between lawyer-led ABS, new entrants and traditional business models.

The market will not be rigged for, or against, ABS.

The safeguards I mentioned on quality and ethics have been developed to ensure consumer confidence in the same standards from ABS as they would expect from traditional models.
However, a level playing field works both ways. So I'd like to say a bit more about the importance of practitioners having the same level of commercial freedoms as new entrants.

A starting point for the LSB is that the less we restrict commercial decision-making in the market, the better.

Only when risk of consumer detriment means that intervention is appropriate will we act – and even then interventions will be strictly proportionate and targeted at the risk of harm.

Quite naturally, firms across the market are considering how best to position themselves in the new landscape.

I've heard many existing players talk about plans to develop through the new flexibilities and the need to withstand greater competition.

More than anything, people are thinking about how to achieve the 'strategic fit' that they need in the changed market-place.

I'd imagine there are many people in this room thinking about how best to position themselves and that, in many cases, such thinking is at an advanced stage.

One of the opportunities for law firms is to attract new investment.

Examples of the preparations already going on across the market include firms reaching agreements with external funders to that effect.

In view of this, we have encouraged the SRA to adopt a more outcomes-focused approach to entities seeking to enter into such commercial arrangements prior to 6 October 2011. This is something that we consider important in order to ensure that it is able to consider informal applications for licences in the run-up to possible designation as a Licensing Authority for ABS.

The reasons I place a great deal of importance on this point are two-fold.

Firstly, a pragmatic concern that the current strict approach risks a loss of transparency on what is happening in the market.

Firms will seek to avoid SRA scrutiny.

No-one wants to see this happen as it impairs the ability of regulators to properly assess the impact of changes in the market and ensure standards.

Secondly - even more importantly - that level playing field between lawyers and market entrants demands that existing players be entitled to the same level of commercial freedoms as new players.

A rigid approach to implementation of the soon-to-be-outdated rules would put SRA regulated firms at a disadvantage to potential new entrants.

This may also have a chilling effect on the market.

This has potential not just to damage the interests of practitioners but also to hinder those of consumers as well.

A focus on outcomes and entities

Change in this area is not limited to business models. It's also been about reshaping regulation to better reflect the realities of practice.

As part of this, in developing the ABS framework, we have sought to move away from burdensome rules and towards outcomes.

This is designed to achieve a consistent set of core outcomes for lawyers, firms and investors that will deliver consumer protections whilst supporting innovation.

Some Approved Regulators are already moving towards an outcomes-based approach, supported by better risk assessment processes.

It has, at its heart, compliance with the spirit of rules, rather than box-ticking.

In my mind I have no doubt that the vast majority of practitioners employ the highest standards of ethical behaviour – placing their clients at the top of their priorities at all times.

However, for the small minority, we should have in mind that lawyers are the greatest of experts when it comes to getting around the strict interpretation of rules.

So it's not about the mechanics, it's about the outcomes for consumers. The new approach ought to reflect that.

Going hand-in hand with this is another significant change.

To date the regulation of legal services has focused on the conduct of individual professionals.

While effective at tackling behavioural problems, this has not enabled us to address systemic concerns in the market.

A greater sophistication of approach is needed that is capable of identifying and tackling risk arising from the processes and systems of providers.

This new entity-based approach will enable a sharper focus on business governance, capability and management competency.

Flowing from it will be a continued insistence on individuals' independence and integrity, as well as the upholding of the professional principles.

This can also assist regulators in making regulation more targeted towards various different sections of the market.

Linked to this, my board has noted the creativity of the SRA in the wake of the Smedley report – evidenced by their adopting a different approach to City firms and by appointing Nick Eastwell in his senior liaison role.

The scope of modern regulation

The settlement passed by Parliament - through the Legal Services Act 2007 - set out a range of 'reserved legal activities' to be carried out only by Authorised Persons subject to regulation by the Approved Regulators.

Outside of these reserved activities are a whole range of advice services that are not subject to legal services regulation.

Examples of these include employment law, will-writing services and immigration advice.

Currently, a whole new layer of complexity is added by the fact that these services become subject to regulation in circumstances where they are being delivered by a solicitor.
In such cases, carrying out these activities becomes subject to the burden of regulation simply by virtue of professional background of the provider.

As I said, the LSB's priority is to address consumer detriment through proportionate and targeted interventions.

This necessarily involves focusing on the activity rather than the title of the person carrying it out.

The effect of these rules on solicitors is to prevent them from creating separate units within their business to deal with unreserved activities – having the effect of limiting their freedom in the market.

The anti-competitive impact of this is to unnecessarily narrow choice and the range of options available for consumers.

Ensuring that the same freedoms are available to new entrants and existing firms will be one of the key tests of new arrangements.

Better regulatory risk assessment can ensure that this is the case, without jeopardising consumer protection

Changing the scope of reservation

Looking to the future, I'd like to make some wider observations on the scope of regulated activity.

The 2007 Act included provision for the LSB to make a recommendation to the Lord Chancellor that the scope of regulation be altered.

In exercising this power, there would be a high burden to overcome before we challenge the settlement reached by Parliament on the services which ought to be subject to reservation.

In any case, reservation is a blunt instrument and there ought to be other more tailored and flexible interventions that can be employed to protect the interests of consumers.

A key consideration must be that changes in this area must be subject to full scrutiny, with evidence of all the issues fully debated.

This includes thinking carefully about the impact of increased costs arising from regulation on access to justice.

Furthermore, any such changes must take place within a coherent policy and intellectual framework, rather than emerging as a result of ad hoc petition.

Research into the current landscape recently - published by the College of law's Legal Services Policy Institute - found that there is not currently a consumer-focussed rationale for reservation.

Considering responses to this will be a continuing area of focus for the LSB as the oversight regulator.

As part of this, we have commissioned Professor Yarrow (Regulatory Policy Institute at Oxford University) to conduct research into the economic rationale for regulation of legal services.

Alongside this we are also conducting consumer research to understand the outcomes that regulation, or other solutions, should seek to protect for consumers.

Emerging findings will soon be tested with a wide range of stakeholders.

Both sets of research will be completed over the next few months.

I look forward to saying more on this area over the next year as we publish findings and our emerging thinking in response to them.

Conclusions

So, to conclude, the reform programme has sought to bring regulation up to date with a changed environment; to widen freedoms for providers; whilst strengthening consumer protections.

Permitting more diverse business models and rolling-out a more sophisticated approach to risk have been early priorities.

But there is further work ahead in getting that balance between innovation and consumer protection right.

Whilst the fundamentals are now in place, there is more thinking that needs to be done to achieve the modernised regulatory framework we need to properly reflect the demands of the market-place.