Chairman David Edmonds

Address to the Council of The Law Society

8 June 2010

I am grateful to your President, Bob Heslett, for his invitation for us to come and address you tonight. It is an appropriate time to reflect on developments in the regulatory regime.

Let me start with Alternative Business Structures:
It is six years since Clementi.
It is 3 years since the passage of the 2007 Act.
It is two years since the LSB was set up.
It was six months ago when the LSB's enforcement powers were activated.
It will be one year - mid 2011 - when applications for ABS licences will be accepted.
It will be another 15 months before the start date of 6 October 2011 for Alternative Business Structures will come into effect.

And at all stages of the process there has been consultation and discussion. That is hardly a timetable that represents an unseemly rush to build a new regulatory regime. It is a measured, considered timetable which, in fact, in the private sector world would be considered generous in the extreme.

This measured pace will continue. The SRA is now currently consulting on the shape of outcome-focused regulation and how this will look and feel for practitioners. And I have every confidence that the SRA can deliver on the timetable that we have agreed.

The Legal Ombudsman is gearing up to open its doors this Autumn, subject to the Parliamentary timetable. Alongside this, the LSB published last week, guidance to Approved Regulators on how we expect signposting into the new complaints-handling system to work.

The first two years before the full the activation of the new regulatory framework was about building capacity across the regulators. It was centred on modernising both the rules themselves and the systems of those bodies enforcing the rules. We could not be confident of delivering effective regulation unless the structures overseeing it were fit-for-purpose.

Now that regime has come into force we are beginning to see real change. I recognise the work of our partners that has made possible the progress we see to date. Throughout that, there has been a vast amount of give-and-take on certain issues.

The ABS concept is not an invention of the LSB. It is embedded in the Act. As it happens, I profoundly believe in the value of free enterprise, entrepreneurship and innovation. I believe the interests of the consumer are best met in an environment where there is freedom for the supplier to respond to market demand. Where there is freedom for the supplier to hire appropriate staff to deliver services. Where there is freedom for the supplier to arrange seek investment allowing the development of his or her business. Where regulation is confined to those areas that protect the consumer and which do not unduly tramell the innovative capacity of the supplier.

Regulation should not be about defending supplier interests. Regulation should not be about restrictive practices that may work against the consumer. Regulation should be as general as possible, focussed on outcomes wherever possible rather than on excessive detailed prescription.

Let me quote from Business Secretary Vince Cable on Radio 3 on Thursday. He was borrowing the wise words of Adam Smith. His theme was how to strike the right balance on regulation. He said '*the interests of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer. And the consumer is all of us".*

This has particular resonance when it comes to changes in the legal services landscape. Consumers are the ultimate beneficiary, but there is much in lighter regulation for practitioners as well.

Let me set out the things that this change does *not* represent. There is no obligation to participate in ABS. There is no obligation for major system changes in many law firms to underpin outcome-focused regulation. And there is no need to change good complaints handling practices where they're embedded in firms.

In short this is enabling regulation – enabling the profession to offer different services more effectively and underpinning professional excellence. And it is happening at a time when many law firms are already facing considerable pressures – including issues over insurance, pressures from the reduction in the legal aid budget, commoditisation of services, and intense competition.

The new regulatory regime should widen the opportunities available to practitioners. We have already seen many firms developing their business model to position themselves for ABS. I know from my contact with many practitioners that a great deal of thinking has already taken place on what scope for growth this offers. It will be those people in the vanguard of change – rather than the rules – that will set the pace for others to follow.

Rule of Law

Throughout the reform process, The Law Society has consistently upheld the importance of independence of the profession from Government. Rightly in my view, the Society has reminded commentators that this independence is bound closely to the rule of law, and that it is a key tenet of our constitution.

The settlement created by the Legal Services Act, rather than diminishing this principle, embeds it through the creation of my Board. As you know, the LSB is run independently of the Ministry of Justice. We have statutory duties. I can and will be called to account for the actions of my Board by Parliament. I can assure you that I spend far more of my time talking to your President than I do on talking to Ministers. My Chief Executive and I spend more time with your senior colleagues here at the Society than we do with officials in the Ministry of Justice.

Importantly, '*supporting the constitutional principle of rule of law'* has been enshrined as one of the 8 regulatory objectives that we share. That means the decisions that regulate

the profession will be taken on the basis of analysis and judgment by my Board. It is a constitutional principle that will underpin the decisions we make.

But independence from Government is an absolute – and so is independence from the profession. You either have independence or you don't. I cherish my independence as Chairman of the LSB and don't for one moment feel beholden to Government, the Bar Council or The Law Society. A regulator should not be beholden to any interests.

So you find in the LSB both an ally and a vehicle for the rule of law argument. Crucially though, regulatory independence cuts both ways. The consensus that emerged against self-regulation and led to the Act was rooted in the widespread perception that it had damaged consumer confidence in lawyers. The next steps in the process will be crucial in making sure that the principle of independent regulation is embedded in practice. We will ensure that this happens.

Just as it was a key element of the legislation, ensuring independent regulation across the legal services sector is one of my Board's most urgent priorities – this is the necessary foundation. So the need for the SRA and The Law Society to reach agreement is now essential.

Just a few days ago, the President warned of the dangers of misuse of power by the LSB. I do not believe for a moment that a Board comprised of distinguished lawyers and lay-people, and chaired by someone who has spent over 40 years working for public organisations, has any intention of misusing our powers. Nor do I believe is there any evidence to suggest that our work is not analytical, consulted upon, reviewed, and results in anything other than Board decisions that are debated on as outcomes of that process. The reality is that the appetite of my Board for intervention is in inverse proportion to the success of the Approved Regulators in pursuing this agenda themselves.

Our approach to regulation is proportionate. We're not light-touch, but we have no instinctive bent towards prescription either. Where there is a risk of consumer detriment, we will have to act. Prescription should be the exception rather than the rule. But this doesn't mean that it will necessarily be tentative when it happens. It will instead be strictly proportionate – major failure means major prescription, opacity will mean heavy monitoring.

Currently my Board is considering your important set of Internal Governance Rules. These will provide the machinery around independent regulation of the solicitors' profession. In coming to a resolution here, I would urge two standards against which to assess the way forward – certainty and simplicity. A fortnight ago, your President sought to persuade his audience that *'There is no evidence from any field of human endeavour that supports the idea that "adding complexity can create simplification"'.* Well, if that proposition is correct, then perhaps I can borrow it back for a limited time tonight.

We would like to see a relationship between the Law Society and the SRA that is clear, straightforward, simple to operate and effective. We are worried that creating complex structures runs the risk of adding to, rather than easing, uncertainty. We should not be involved in the detail, but we do need to be sure that there is effective separation of the representative arm from the regulatory arm, and that the regulatory arm has the competence and the resources to run its business effectively.

I asked my staff to draw a diagram of our understanding of relationships between Law Society and SRA. The numerous lines of accountability between committees and structures currently proposed have, I would suggest, support well the President's argument that adding complexity may not aid simplicity.

I would gently suggest that bringing this debate to an end would enable the professional body to devote all its energy to carving out a major presence on the public policy stage – and more fearlessly advancing the interests of the profession against the background of an improved reputation for lawyers amongst consumers and commentators.

I thought that the recommendations of the Hunt report offered a clear way forward: a corporate hub, from which resourcing of both the professional and regulatory elements can take place. This would give consumers and practitioners the certainty and clarity that they need. The corporate hub could deal independently with the strategic issues facing both arms. As Hunt says, such a model would create a stronger institutional link between both arms, whilst securing the independence of the SRA.

For me, the key issue is that shared services have to be exactly that – services.

Not prejudicing what you have proposed, they cannot be a means of imposing control by the representative arm. The more the SRA manifestly has the freedom to access the services it needs, the less need there will be for intensive regulation.

I am dealing with this at some length, because we asked for the issue to be resolved by 30 April. It is a fundamental issue to be settled. I will say this evening that the LSB now expects agreement in compliance with our internal governance requirements in the next few days.

When we reach a settlement of this kind, in which consumers and the wider public can have full confidence, that's when the LSB can sit back. And all the agreements and arrangements put in place need to be transparent and on the public record.

We do need certainty. As the Law Society knows, the LSB Board is currently in the process of fulfilling our statutory duty to approve Practicing Certificate Fees.
In doing so, we have told Approved Regulators that we will work to their budgetary cycles in order to support their internal processes. We're not asking for details on professional body expenditure and we won't need a detailed spreadsheet. But our hope too is that this provides an opportunity for the Approved Regulators to give their membership more data than they have had in the past.

I accept of course that the LSB needs to provide efficiency and certainty in approving rule changes. The LSB team recently processed the SRA's recent rule changes in 28 and 80 days respectively, compared to the months or sometimes years taken by the old system. We are a lean organisation of only 35 staff, but that means that efficiency and streamlining of our processes is even more important – both in delivering value for money and in getting things done.

The Law Society and the SRA have made huge changes in the last two years.
Over the last year, I have discussed on many occasions the issues I have touched on this evening with Bob Heslett and Charles Plant. I would put on record my personal appreciation for all that they have achieved. I do not believe that in any sense the timetables that we are now working to for the creation of the Ombudsman, the introduction of ABS, or the new governance rules need to be delayed – and that is as much in the

interests of the suppliers as the consumers. They are realistic and focussed. And that means – I also believe – that all suppliers need to look very hard at their own business plans, their own markets and at the services that they offer.

We may not always agree throughout the stages ahead but it is important that we have these discussions. Honesty in our relationship is what is needed to make progress. I hope that tonight's discussion is a feature of that honesty and I thank you for the opportunity to be here to address you.