**LSB Chairman David Edmonds**

**RIAD conference**

My remarks today are about quality in legal services provision, with a particular focus on what the reform programme has to offer consumers in ensuring standards.

**Our three initial areas of concentration**

Parliament was very clear on what the mission of the Legal Services Board was to be, when it passed the Legal Services Act 2007, with cross-party support.

The intention was to create a new Board, sitting over the existing legal regulators, with a reform programme designed to embed the interests of consumers at the heart of legal services.

This was a political response to the belief that until now, legal regulation has been designed and run by lawyers, and that the consumer interest was too often secondary to the producer interest.

We have therefore focussed our initial work with the Approved Regulators – which for lawyers are the existing organisations originally drawn from the Law Society and the Bar Council – and begun to make this reform real for consumers and in the wider public interest.

Now is an appropriate time to look back at progress against our three initial areas of concentration – which were designed to embed the fundamentals of the system for properly serving the consumer interest.

We have been in existence for nearly two years.

We have focussed on basic goals.

Today I am now in a position to report that, on fundamental three priorities, we are practically there.

The three strategic changes enacted so far on the reform programme are about:

- increasing choice through liberalising the market;
- building the capacity of the regulators to monitor quality; and
- improving the complaints-handling system to ensure redress when things go wrong.

These are all linked, of course.

Our strategy is to increase the amount of choice and competition in the market, to help consumers to navigate through available options, and to ensure that there is a method of obtaining redress if the service is not up to scratch.

**Firstly, choice in the market**

Historically in the legal services sector, limitations over who can hold ownership stakes in law firms have hindered competition and limited choice for consumers.

Opening up the market through doing away with these restrictions is a crucially important – potentially transformative - step in promoting the interests of consumers.

Not only will it allow lawyers to work in different ways with other professional service providers – creating new packages of services for consumers – it will drive innovation through allowing providers to adapt and tailor their offer.

Yes, it is true that the competitive effect of new players coming into the market is likely to mean that existing firms need to improve their levels of service, to focus on consumers, to be able to compete in a tougher market place.

A major priority in allowing these new Alternative Business Structures is to free up the existing players to innovate, to create new partnerships and to be free to act in a less restrained way.

The current economic climate means that encouraging innovation as a route to growth is more important than ever.

Whilst it is foolish for regulators to try to predict the future shape of the market, it is a vital objective for regulators to liberalise where they can, to knock down unnecessary barriers to entry, and to stimulate competition.

But also the programme has something to offer much more widely, as the Minister himself, Jonathan Djanogly MP, observed as part of his recent remarks to the Law Society: '*ABS should enable greater cooperation across the legal and other professions so that knowledge and resources can be joined together to meet the challenges of an increasingly globalised economy'*.

Crucially, therefore, it is about reflecting and keeping up with modern commercial expectations and practices just as much as it is about driving future innovation.

We are now at the stage where there is less than a year before the first ABS begins trading.

My team has been working hard with partners to develop both the licensing regime for ABS and also the new framework of outcomes-focused regulation that goes hand-in-hand with it.

A major part of that work has been to ensure robust consumer protections are at the heart of that system.

We've developed stringent rules on governance and accountability that will ensure that professional ethics are upheld.

As one of our regulatory objectives, ensuring access to justice is protected and – wherever possible – widened, must be a fundamental priority, as the Minister reminded us through his remarks a fortnight ago.

**Referral fees**

Another facet of access to justice has been the debate around referral fees.

In the last few weeks my Board released for consultation its findings at the end of a long process of evidence-gathering over the impact on the market of referral arrangements.

Over years, some have called for action to prohibit lawyers from entering into these arrangements, citing consumer detriment arising through conflicts of interest amongst practitioners.

We asked our Consumer Panel to explore this detail in issue and offer advice.

In addition, we commissioned and reported on a raft of new original evidence and then consulted on findings with partners across the sector and outside of it.

Our preliminary view at the end of that process is that there is not the compelling evidence of consumer detriment that would be needed to underpin a ban on referral fees.

In fact, we found that in some areas the arrangements had a positive effect in helping consumers engage legal services – particularly in the personal injury arena.

That said, we did find that transparency of arrangements is in some cases inadequate and, further, that this has a disempowering effect on consumers ability to judge the quality of their experience.

In response to this we have proposed a raft of strengthened transparency obligations over those who engage in these arrangements.

We encourage all partners to critically study those findings and make submissions to us before the Board reaches its final view.

**Independence**

Increasing choice in the market, and routes into services, is an important set of steps, but what is also crucial is the ability to monitor standards.

This is as important in a post-ABS world as before.

Yes, there is an onus on the consumer to take responsibility for making discerning decisions on the service they need, but it’s up to the regulators to provide them with the tools and ensure minimum standards across the sector.

One of the main drivers for the 2007 reforms was to reassure the public about the rigour of regulation, chiefly by ensuring the frontline regulators have a common baseline of independence and competence.

The independence question is crucial and has been a major area of work for the Board over the last two years.

Following that process, there can be no allegation that - in looking critically at minimum standards in service delivery across the industry – the regulators are in thrall to professional interests.

Let me say a little more about this.

As you know, the LSB is independent both of Government and of the legal profession.

We must take decisions against our statutory duties and within our statutory powers, and that means independence from the Ministry of Justice, but we are also distinct from professional interests.

A majority of the Board's members and staff are lay people and I am a lay chairman.

Lawyers on the Board and amongst the executive play an important role, but the non-lawyer majority is a fundamental part of our independence from professional interests.

It is essential that frontline regulators do not act as trade associations, lobbying for the interests of members, whilst also disciplining and regulating them.

This is undermining to public confidence.

The creation of the independent regulatory arms – including the Solicitors Regulation Authority and the Bar Standards Board was the important first step for addressing these concerns.

But the creation of the organisations marked only the beginning of the process.

Regulatory independence, if it is to be real, depends not just on creating a nominally distinct body, but also on how that body is allowed to exist, its independent decision-making and its effective resourcing.

In these key respects, issues concerning the relationship between the representative and regulatory arms of the Approved Regulators needed to be defined once and for all.

This is why we announced a set of Internal Governance Rules, which came into effect in January 2010, to set out very clearly what real independence for bodies such as the SRA, BSB and the other regulatory arms means in practice – backed by the enforcement powers of my Board.

Some examples of the issues captured by these rules include the process for regulatory board member appointments, the freedom of board members to set strategy and how their executives are resourced to ensure that they can properly do their job.

Crucially, and similarly to the LSB, a non-lawyer majority is expected on all regulatory boards.

But writing those rules is only the first step, so we have been working with the Approved Regulators to bring them all into compliance across the board.

Part of this has been identifying what needs to change in their arrangements, as well as setting reasonable timescales for implementation.

As always, proportionality has been a guiding principle.

We have discussed with each Approved Regulator what is needed to achieve compliance, recognising that each has a different set of needs and operating conditions.

This process of consultation and discussion has been going on for the last 18 months – firstly in the initial drafting of the rules and, more recently, on the changes needed to bring the Approved Regulators into compliance.

The final stages of the process came to an important milestone at our Board meeting last month, where I am able to confirm that action plans to bring governance arrangements into full compliance were agreed in respect of each of the Approved Regulators.

In a couple of weeks' time, we will announce the full details of the governance frameworks agreed for each of the regulators.

Before, regulation of the law was – rightly or wrongly – perceived as founded on self-interest.
Now, it's clear that the public interest is at the heart of regulation.
Before, it was seen as dominated by the profession.
We're clearly on the way to lay majorities.
Before, the profession could seek to influence by the back door by keeping investment to the bare minimum.
Now regulators can demand the tools to do the job, confident that the LSB will see fair play if there are problems.

And now the profession has to win the arguments publicly and transparently – that's better for its standing as well as better for consumers.

This brings to an end an important period of getting the fundamentals of legal services arrangements in place across the sector.

In view of the important monitoring role played by regulators, getting these basics right has been a crucial measure in building capacity in the sector and improving consumers' confidence.

**Complaints-handling**

One of the necessary foundations for ensuring quality is a proper complaints-handling process, as well as an intelligent approach to what patterns of complaints can tell us about the service.

One of the realities of the sector in which we work is that consumers often engage with legal services during some of the most sensitive periods in their lives.
Whether it's about transferring property, making a big change to family life or even fighting for their freedom, people's contact with lawyers tends to be at vulnerable periods.
Happily, consumer research consistently demonstrates that most people are happy with the service they receive from lawyers.
In our own research, three-quarters of respondents were either 'satisfied' or 'very satisfied with their service.

However, as with any area of service provision, is not always the case. In the cases where genuine complaints arise, an urgent priority is to ensure that arrangements support those consumers whose experience has fallen short.

A perception of poor complaints-handling in the legal services sector was one of the main drivers of the reform programme.
It was felt that consumers were faced with a bewildering maze to navigate through, that processes were slow and that consumers were not being properly appraised of how to enforce their rights.

The work of the Board has been to put in place a new set of arrangements for handling complaints.
Under the chairmanship of Elizabeth France, the new Legal Ombudsman last week opened its doors.
I've talked about how bewildering the previous system was.
Consumers need support in navigating through it.
Earlier this year, we announced new requirements for firms to have to signpost consumers towards the Ombudsman if they are dissatisfied.
From now, consumers can be confident that if they are unfortunate and experience poor service from their legal services provider, they have free access to an independent, impartial dispute-resolution body.
Lawyers too can be confident that they will be given a fair hearing.

The opening of the Ombudsman has been a major milestone in the delivery of the reform agenda – and we look forward to seeing their progress.

But alongside this there are several other important strands of work for regulators in understanding the role of service complaints in improving standards of quality.

The first is in ensuring arrangements that mean consumers should need not to go to the Ombudsman at all.

For the first time, there is a statutory requirement that all Approved Regulators develop regulatory arrangements that require the lawyers they regulate to have effective complaints resolution procedures in place.

Alongside these provisions, we at the LSB also have power to specify particular requirements for inclusion in Approved Regulators rules for complaints resolution.

Secondly, I've spoken so far only about the operational stages of handling complaints.

The robustness of that process is crucial for the parties concerned – both complainant and the complained-against.

But what about the rest of the market and what we can learn from patterns of complaints?

Data relating to complaints is one of the most vital sources of information the profession has to measure and improve its own performance.

There is a clear commercial basis for both practitioners and Approved Regulators to collect and assess complaints data so they can evaluate services and plan for future developments.

This is particularly the case where gaps in the market are revealed – telling us where there is scope to improve and innovate to satisfy unmet demand.

**Conclusions**

I've spoken about a number of strands of work that are priorities to us in promoting quality across legal services.

Taken individually, and also collectively, they are important elements of the reform programme and in protecting consumers interests' prior to, during and – in some cases - following their engagement with legal services providers.

The ultimate test for the success of this work is the degree to which individual consumers are satisfied with the legal services they receive.

But success will also bring an important outcome for practitioners collectively – the commercial and professional benefit that goes hand in hand with improved public confidence.