Competition in professions breakfast roundtable: the future of the legal services market Wednesday 23 January 2013

Response by Chris Kenny, Chief Executive Legal Services Board

Ladies and gentlemen. Good morning.

I would like firstly to thank OFT for their initiative, both in commissioning the Europe Economics Report and in hosting this event to discuss it. In many ways the OFT's report of 2001 initiated the process of legal services market reform and it is good to see the competition authority continuing to focus its gaze on professional services markets. I hope that the CMA will continue to do the same when it inherits their mantle next year.

I will just comment briefly on the three areas which Philip's remarks covered.

Regulation and simplification

We should begin by acknowledging that the 2007 Act did very radically simplify the machinery around complaints. Replacing, in the Solicitor market, a combination of second-tier resolution, a third-tier ombudsman and a regulatory commissioner with a single ombudsman was a major step forward.

However, in structural terms, the rest of the 2007 Act was rather more complicated. It arguably replaced a complicated 2D maze with an even more complicated 3D labyrinth. So simplification is worth returning to, but not just at the organisational level.

The reasons why regulation remains complicated include:

- The failure to consolidate existing legal services regulatory legislation – for example, the SRA live with requirements flowing from major pieces of legislation in 1974, 1985 and 1990, as well as 2007;

- The “grandfathering” of all existing regulatory arrangements into the Act’s regime, with only limited opportunity for their continuing relevance to be questioned;

- The inevitable complexity that arose from professional organisations choosing to “spin-off” their regulatory arms from the professional body, rather than vice-versa.

So, while it is pleasing to see the Europe Economics’ conclusion that there is little evidence of extra cost being imposed by virtue of the regulatory changes, there is a job to be done to assess the totality of regulatory costs and burdens on the market. That is why the LSB has signalled in our draft Business Plan the intention to work hard in the coming year on the cost and complexity of regulation.

If we can find simplifications in function, underlying statute and detailed prescriptive rulebook which may then lead to simplifications of the form of regulators, all to the good. But the analysis has to be that way round, rather than simply being driven by a desire to put bodies to the sword.

Consumer dissatisfaction

I would like to be able to claim a really powerful success in complaints handling. Despite Adam Sampson making significantly more attempts to project his organisation into the media and consumer marketplace than his predecessor bodies did, the number of complaints coming to the Legal Ombudsman remains some 15-20% below that which went to those predecessors. Does the very existence of an Ombudsman with the ability to impose a binding settlement on lawyers mean that standards are rising in the way that firms and chambers handle complaints first time around?

One would like to think so, but the hard evidence is lacking. The depressed state of the conveyancing market is a major confounding factor. But, perhaps more importantly, the Europe Economics finding that many consumers still remain reluctant to complain bears out earlier LSB research from 2011. While it is possible to hypothesise a number of reasons why more consumers may be wrongly dissatisfied with legal services more frequently than some other goods – and may

also be more reluctant to complain than in other cases - that doesn't remove the fact that there is a real issue.

For that reason the LSB challenged each Approved Regulator back in July to deliver an action plan for their own organisation to improve their knowledge of how well those they regulated were making complaints machinery at the first-tier work effectively, not least in relation to signposting at an appropriate stage to the Legal Ombudsman. We will be following up on those action plans throughout this year. The OFT report gives a sharper edge to the need for action here.

Liberalisation.

I have a great deal of sympathy with Philip's remarks on the need to speed up the process.

In part, some of the delays which have been observed to date are a natural function of "growing pains". In other cases, they are also a consequence of the over specification in the 2007 Act – we are now at a stage where we no longer need to regard ABS applicants as very dangerous genetically modified organisms to be handled by scientists in white coats at Porton Down only after five years of clearance by an ethical committee. The legislation will need to catch up with that reality sooner rather than later.

And we also welcome the recent spurt in approval activity by the SRA. We have been discussing with them ways to consolidate that progress and I know they are looking at some specific systems and IT and other resourcing changes to underpin this. Indeed, their Board are discussing the issue today. There is some good practice to reflect on from the Council for Licensed Conveyancers, for example in the ready availability of a simple application form and clear guidance on their website.

That degree of scrutiny and action on the authorisation process is, I think, essential, not only to ensure that new entrants can arrive in the market, but also to maintain the current remarkable innovation driven by some existing non-ABS firms responding to the challenge of new entrants. This has been quite as important as that which the new entrants have brought themselves – and indeed, that innovation was the point of the reform, rather than it being simply a numbers game.

In that spirit of encouraging innovation and emulation, I close by also welcoming the report's comments on pupilage. It seems to the LSB just as important that there is liberalisation and, where justified, deregulation in education and training as in services. We hope that the education and training review will point the way.

The report's point about pupilage training organisations are interesting, but one might ask even more fundamental questions about whether pupilage and whether training contracts ought to be matters for regulators to get involved with at all.

As an alternative, one could specify "day one" outcomes when a lawyer starts serving the public, but leave it to the market to decide on the best way to bring people to ensure that those competence levels were in place. I hope that is the kind of debate which the LETR will trigger – and which we might even get into today.

So, in conclusion, whilst I doubt if anybody in the room will agree with every single statement in the OFT report, I do hope that there is a broad consensus that it is highlighting not just the right areas for debate, but some areas where there is a need for early action to maintain momentum as well.

As you would expect, the LSB will continue to be a very active participant in both the talking and the doing! But, as I have said before, the extent of our activity will be determined primarily by how effectively front-line regulators rise to the challenges which the report lays down.