Response to Consultation by Legal Services Board

A lot of what Government suggests then does in relation to the legal profession (whether that is the reform of legal aid, reform of the judicial process or reform of the delivery of legal services) looks very much like the Emperor's Parade.

Assumptions become fact. Aspiration becomes the truth. Deviation from the thinking that is the basis for the reform is characterised as self-interest or defensive.

There is no proper consultation or debate. True consultation would allow those with a view to express that view and for others to consider whether that view has any validity. The history of "consultation" on legal and associated issues (mainly legal aid) is that a policy is framed and consultation is all about the implementation of that policy.

Regulation of the Solicitors' profession is in reality problematic. The SRA is inefficient. If I were to run my firm in the way that the SRA deals with eg complaints about other Solicitors, I would not be allowed to have a contract with the Legal Services Commission. Put another way, the standards to which I am expected to work are not reflected by the standards to which the AR works.

OFR was considered to be a necessary reform to the way that Financial Services were regulated. Clearly OFR was not considered to be necessary for the regulation of Solicitors. This was clearly stated by Government following the review of the regulation of the financial services sector.

The LSB and the SRA have decided that OFR is better and is necessary for the Solicitors' profession. The evidence for that is weak.

Indeed there is an argument that with plurality and with the expansion in the provision of legal services (if there is an expansion and if ABSs do come into existence) that prescriptive regulation is more likely to provide consumers of legal services with the protection they need and is more likely to provide Solicitors with the certainty they need to continue to practice.

Solicitors, especially those who undertake publicly funded work, are already under a lot of pressure. The financial returns from legal aid work are slim. The thrust of Government reform assumes that larger, regional firms would be able to maximise profit from legal aid work through "economies of scale". The Standard Monthly Payment system is not working. We are owed money from the LSC for work we have done which cannot be paid to us because of the SMP system. Apart from that from the start of January to end of March each year the LSC seems to run out of money and uses every excuse and delay not to make payments that are outwith the SMP system. There is a huge amount of administration and supervision required by the LSC. This again places a heavy burden on partners and managers of smaller firms. The Risk Assessment requirements and the new code of conduct create even more layers of bureaucracy and supervision which are disproportionate to the work that is being done and the fee being paid for legal aid work. More bureaucracy is being imposed.

Instead of a prescriptive Code of Conduct a light touch approach is proposed. No real effort has been made by The law Society or by the SRA to review, update and improve the continued education and assessment os Solicitors. Accreditation Panels are self-serving money spinners for the organisation that provides approval and are no real indicator of quality (see the June 2009 minutes of the Quality Working Group established by the LSC and Law Society and the reference therein to Avrom Sherr).

The proposed QAA is another example of something being created to give to air of quality assurance when the truth is it will not do that. To offer continual training and assessment and one-to-one observation and feedback makes more sense for any advocate.

The SRA and the LSC is too "consumer" focussed. Solicitors are members of a profession. Clients are the people with whom Solicitors interact. The Solicitors as members of a profession is something which the SRA and LSB appears to wish to ignore. Promoting "public interest" ignores this too. The SRA should not be involved with or concerned about poor service. The SRA should be concerned about breaches of Ethics and Breaches of the Code of Conduct by Solicitors reported to the SRA by clients, other Solicitors or others (eg Magistrates/Judges). The emphasis upon consumers misses the point about Solicitors as members of a profession. The desire to pave the way for ABSs has allowed this to happen.

Question 1

No. There is no evidence that ABSs will have a significant impact upon the provision of legal services. There is no evidence that outside investment in law firms is likely. Legal Executives and Licensed Conveyancers have been subsumed into traditional law firms (with some exceptions which tend to be call centre type operations) because the traditional law firm makes sense, works for the client and delivers cost-effective services.

There is too much emphasis on access to justice/legal services and not enough emphasis on access to quality legal services that help deliver real Justice for clients as opposed to being a money-making machine for the owners of the business.

Banks may be keen to recommend a particular call centre type operation (because of the payment of a referral fee) but little is done to assess if the service offered is appropriate. Many people don't complain because the institution lending the money has packaged the whole thing up as "free" when in fact the truth is different.

Question 2

OFR-no;
Risk identification framework-no;
Supervision-no;
Enforcement-no.

Gathering data and statistics is a waste of money and time. Having SRA representatives who will visit firms regularly (eg twice a year) makes more sense. Anyone with half a brain could walk into a firm and assess almost immediately by looking at files and management systems if the firm was a risk or was not. A visit

need only be for 30 minutes for those firms with a good PII claims record and a good LeO complaints record. Longer time could be spent with those who need it.

Question 3

The Regulatory regime does not need to be and should not be flexible. It should be a difficult thing to become a Solicitor and to give legal advice to the public. Access to the profession should be broadened and that breadth maintained through adequate, extensive, proactive training and external supervision and mentoring so that "feedback" and certification to practice in certain areas of law and up to certain levels becomes the norm (just as with doctors). The Code of Conduct should be strict and the emphasis should be on the Solicitors continued membership of the profession as opposed to consumer rights.

Question 4

All Regulators should be assessed following inspection.

Question 5

My concern is that the approach of the LSB towards OFR will weaken the professionalism of Solicitors and will ensure that practices which should not be allowed will be allowed UNLESS the consumer is adversely affected [for instance cold-calling, direct approaches to potential consumers on the street or in shopping centres etc; deliberately misleading advertising; the misuse of incentives ("buy one will, get one free", without consideration of the content of the will or whether the content has been discussed fully with the client)].

I have no doubt that the SRA will demand increased contributions from Solicitors and will create greater administrative burdens and requirements on the basis that the LSC will place requirements upon them which necessitate increased costs to Solicitors and increased bureaucracy to maintain the public interest and to protect the consumer. The LSB will be used as an excuse for inefficiency.

Where there are strong, well-organised local Law Societies they should be allowed to undertake directly and fully in competition with the SRA the Regulatory function of the SRA.. The LeO exists to protect the consumer. The SRA and local Law Societies should exist to maintain professional standards of the profession and of those who would wish to provide regulated legal services.

Question 6

Membership of the Board of the Regulator should be open to election alternatively some seats on the Board should be open to election.

There is far too much emphasis on the interests of the consumer and on the possible impact of ABSs. There is not enough emphasis on education, training and assessment as a guarantee of quality and as a warranty of high ethical standards. OFR is seen by many as a way of writing their own ethical handbook.