

Regulating through uncertain times

Symphony Legal – Spring Conference: Powering Through Uncertainty

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Introduction

1. Good morning, and thank you for the opportunity to speak here today on the challenges faced by regulators in these uncertain times. I'll admit it's a broad title and I'm sure at this point everyone's asking: uncertainty? What uncertainty?!
2. Of course, Brexit is a priority for the Legal Services Board and is no doubt as much a concern for all of you. The implications for the profession and the Justice system are clearly far-reaching and go well beyond where we as regulators can have an impact. I'm going to start today though by speaking a little bit on how we, as a community, have been preparing for EU exit.
3. I'm not going to talk for long on this point, mainly as I'm keen not to cover any of the same ground that others will no doubt touch upon after I'm finished, but also because I'm keen to highlight one or two other areas where we at the LSB see uncertain times ahead for the sector, and to tell you how we're responding to those.
4. The world is changing, and the profession is changing with it – it's our job, as the oversight regulator for legal services to make sure that our regulatory approach is appropriate for the challenges we face, and that the regulation of the profession continues to be proportionate and in the public interest.
5. **But first: Brexit:**
6. Of course Brexit will bring changes, and with any such change comes the need to respond and adapt. Whatever the next few weeks brings, we know that legal services are and will continue to be one of Britain's greatest exports – to cite just a few examples as proof of this, I can tell you that:

- The UK legal services market was valued at over 32 Billion pounds in 2017;

- England and Wales is 11th in the World Bank's global rule of law index; and
 - The E&W legal sector leads the way internationally in terms of openness to innovation and new ways of doing business.
7. I could keep going, but the point I'm trying to make is that it is near impossible to over-estimate the importance of the legal sector in E&W to the UK economy and its public.
 8. That's why the LSB has been working closely with the legal services regulators and the Ministry of Justice to identify what actions need be taken to meet the challenges posed by Brexit in relation to legal services regulation. We know that we can't predict the future, but we can plan for it.
 9. And that's why, at the beginning of February, we published an exemption direction that will allow regulators to make the changes they need to in the event of a no-deal scenario, without undue burdens or delay.
 10. At this stage, it is far too early to speculate as to what the exact terms of the future relationship with the EU will be, but we can be certain that much of that which underpins the international attractiveness of the E&W jurisdiction will be unaffected by EU exit, including the use of the English language, the common law precedent system, the high quality of its judiciary and lawyers and regulation which is independent of the profession and critically also independent of Government.

Regulatory performance and IGR

11. But as regulators, it is our duty to maintain that emphasis on standards – and I'm confident that, coming back to the title of my speech, our regulatory approach through such uncertain times should be to double down on maintaining standards a.
12. Any changes that occur as a result of the UK leaving the EU will not distract the LSB from its key focus: the day-to-day work overseeing the regulation of the profession and holding the legal services regulators to account.

This time last year we were getting ready to publish our strategic plan for this three year cycle in which we identified an ongoing theme for our work – our duty to promote the public interest through ensuring independent, effective and proportionate regulation;

13. We believe that this objective is best served by guaranteeing regulatory independence and by ensuring minimum standards are met by the regulators.
14. That's why over the past two years we've revised and improved the frameworks by which we conduct these core functions. Those of you who follow regulatory matters closely will have seen we recently published a table outlining our current assessment of the performance of the regulators.

15. We've assessed their performance against standards that directly reflect the roles they take in regulating you as professionals:
 - a. their approach to regulation,
 - b. their supervision, enforcement, and authorisation processes, and
 - c. how well they are led as organisations.
16. We're confident that the new framework provides a better standard by which to assess their performance, and one which will in turn improve confidence in regulation among the public and also among you, the regulated professionals delivering these legal services.
17. We've put on record our belief that legislative reform is the best option for ensuring independent regulation that is proportionate and in the public interest. But we know that – for the time being – this isn't coming, and our proposed new Internal Governance Rules (or IGR) will provide us the assurance we need that regulation is being carried out as independently as possible under the current statutory framework.
18. It's also true that we cannot allow Brexit to blind us to other external factors which might fundamentally impact upon the profession.

Changing market and profession:

19. Compared to a decade ago providers of legal services now have a wider choice of regulator and greater freedom in how they can be structured, including Alternative Business Structures (or ABS). The SRA's Looking to the Future reforms will open up new avenues through which SRA-regulated solicitors will be able to practise – be it in unregulated firms or as freelancers. Unregulated providers have a modest overall market share but there are segments of the market in which they have a greater foothold and this will grow if traditional providers do not respond to the changing marketplace.
20. You may be asking: how can the LSB respond to these changes? We know that elements of the SRA's new standards and regulation are controversial. We have heard from parties opposed to the Solicitors Qualifying Examination and the regulatory changes and we make a point of listening to every argument put to us.
21. But here's the truth: when a regulator brings a proposal to us as a rule-change, we have only limited grounds for refusal under the Legal Services Act 2007. By law, we must judge an application based on its potential impact against the regulatory objectives laid down in the Act.
22. What we will continue to do, however, is engage with the frontline regulators, scrutinise and monitor their actions and insist that their decisions are evidence-based and the result of consultation and engagement with those they regulate – the

performance framework I spoke of earlier provides us the best channel through which we can assess the effectiveness of approach and decisions taken.

23. For solicitors in unregulated firms and those going freelance, we have made it clear that we expect the SRA to monitor the impact of these changes to make sure that the anticipated benefits do arise.
24. For the super-exam, you may have seen that we approved a rule-change relating to this in March last year. But this was just one part of the required changes, and we will assess the next stage with the scrutiny and precision we apply to each and every application.
25. Our statutory decision-making remains a core strand of our work and yet another example of how we as the LSB will remain fastidious in working to ensure that, despite the uncertainties, change in the legal services market is positive, continues to benefit consumers and promote access to justice and is in the public interest.

Technology

26. Changes to the market are part and parcel to life as a provider of legal services, but on a more fundamental level, the way in which we work and the tools by which we deliver these services have changed too.
27. I have been a Solicitor for over 30 years, and when I think back to what it was like when I started as an Articled Clerk, I know that if I set out how we worked then there is a risk of it sounding like a Monty Python sketch.
28. Nonetheless, it is important to acknowledge how much law firms have changed and adapted themselves to new technologies.
29. I used to write telex messages to our clients, in pencil, on a piece of paper and then hand that message to a messenger who in turn gave it to one of the four staff we had in the telex office. The reply (if we were lucky) was received the next day. We thought this was the height of modernism – how much did we have to learn!
30. I had practised for nearly a decade when I first used a computer. That was 1995. Email came a few years after that. And I may be late adopter but I did not have a mobile phone until this century – so for half of my working life no one could contact me when I was out of the office. What bliss.
31. Now you can hardly open a paper without reference to fintech, crypto currencies, legal tech, smart contracts and of course artificial intelligence. Whilst the sector has not yet experienced significant disruptive innovation, we expect the impact of technology to become an increasingly visible phenomenon and for it to drive ongoing changes to the way that consumers engage with legal services.

32. There will be an increased role for AI in performing the type of evidence based decision making that we currently usually associate only with humans not machines.
33. As regulators, we have to ask, how far will this extend?
34. Would we for example allow AI to help us to determine the outcome of litigation? If that sounds improbable or even morally questionable then let me, without casting judgement, give you a few examples:
35. In an experiment when a computer and lawyers were asked to review 775 different types of mis-selling and predict the ombudsman decision for those cases, the computer was apparently accurate in 87% of cases. This was a far higher degree of accuracy than the figure achieved by the lawyers who participated.
36. A more recent experiment predicting the outcomes of human rights cases, the AI scored almost as high at 79%.
37. As AI continues to improve, it's not unthinkable that computers be asked not simply to predict outcomes but determine them.
38. Technology will also drive further commoditisation of legal services, which is already emerging in some areas such as will writing and divorce. Large firms are already using smart contracts that negate the need for junior solicitors to spend hours trawling through banking and other transactional documents.
39. As the role of technology in service delivery increases pace while delivering many benefits, it is possible new regulatory risks may also emerge. One example is likely to be related to the jurisdiction of transactions. We can see this already in transactions using block chain. But I believe the E&W jurisdiction is well placed to deal with this.
40. When I practised my speciality was what is termed 'dry shipping litigation'. The charter parties or bills of lading on which I used to advise were about cases such as the one where our clients were shipping Mozambican coal from South Africa to Spain on a ship owned by Norwegians leased to a Taiwanese company and under the flag of Panama.
41. Nothing in those transactions ever touched England but E&W law was used not least because it was and is the jurisdiction of choice. What we as regulators want to do is to facilitate that choice, by ensuring regulation keeps pace and effectively manages any risks without stifling innovation.
42. Research we published in November showed that fewer providers saw regulation as a barrier to innovation than in 2015; nonetheless, a third of providers still do see regulation as a barrier and more widely, factors including a lack of IT expertise and ethical issues have meant that levels of innovation in the sector have remained static across the same period.

43. We're already working on a project that will provide a resource through which frontline regulators can better understand, learn and adapt their approaches to technology, and which we hope will inform and shape the environment in which law firms and providers of legal services can embrace these new technologies safely, ethically and with the best interests of their clients and the public in mind.

Five-year policy objectives:

44. As we move forward, we'll be working on a number of projects along this theme as we seek to achieve the first of our proposed new *five-year policy objectives*: namely, that access to legal services is increased *through the promotion of responsible technological innovation that carries public trust*.

45. It is through this that we will judge our progress against our strategic objective of "increasing innovation, growth and the diversity of services and providers."

46. In my last few minutes, I'd like to outline two further objectives which we consulted on alongside technology.

47. I've said a lot already about the factors we see driving change in the sector and how we as regulators can respond. But the LSB is an agent of change in its own right, and there are areas where we believe that we can secure improvements in the sector to achieve our overall goal of legal services that everyone can access and trust.

48. I've spoken about our desire to promote the public interest through ensuring independent, effective and proportionate regulation, and on this theme we have set ourselves a challenge.

49. All of you who offer a reserved legal activity, who have qualified as a provider of legal services and who are regulated by a frontline regulator, will have demonstrated the necessary training and skills at the beginning of your career and the CPD activities you undertake will provide you an opportunity to work to maintain and improve on those competencies.

50. The question for us then, is what more could be done – without creating an unnecessary regulatory burden on you, the provider – to ensure that consumers receive the highest quality service and that they have the necessary assurance that they are engaging the services of a competent provider.

51. The Legal Ombudsman, the Solicitors Disciplinary Tribunal, and PII are each an incarnation of the ambulance at the bottom of the cliff, ready and waiting to pick up the pieces after a problem has arisen.

52. The average person on the street is generally able to judge whether the service quality they receive is satisfactory – for example, how fast was a question answered, how frequently were updates provided. But it is much more difficult for a lay person to

judge the technical quality of any legal advice they have purchased. It may be months or years until they encounter a problem caused by a technical error, and the impact of this could be devastating.

53. We want to know if, in relation to how technical quality is maintained, the legal sector is an anomaly. How do other professionals in other sectors maintain the technical quality of the services they provide? Are there lessons to be learned from medicine, engineering, accountancy that could inform the expectations we as regulators of legal services have of you as professionals?
54. This is not us saying: “current arrangements are inadequate”. We want to go back to first principles and establish whether more should be done.
55. Finally, we’ve said that we want to make it easier for all consumers to access the services they need and get redress; we have been working hard to make sure this is the case: the transparency reforms introduced by the frontline regulators will ensure that consumers of legal services can access the information on pricing and redress they need to make informed decisions on these matters.
56. However, research that we published in 2016 on the legal needs of individual consumers identified that of those individuals who experienced one of more legal issues in the three years prior:
57. Only 25% initially considered their problem to actually **be** a ‘legal issue’.
58. When the legal issue started, nearly half of respondents were unaware of legal service providers who could help them.
59. And when it came to taking action, 18% of respondents did nothing at all, most of them because they felt that ‘nothing’ was all that could be done.
60. Our work with the regulators on access to legal services and redress is of little use if individuals faced with a legal problem are not provided with the information necessary to judge whether their problem is legal in nature, who they can turn to if it is, and what they can expect from their provider. That’s why on this theme, we will aim to understand how, from a regulatory perspective, we can enhance the public legal education currently on offer and make it easier for users of legal services to approach legal problems.
61. There are a lot of wonderful organisations already working in this space, and our aim is not to duplicate their work; rather, we hope to work with and learn from them how best we can meet this particular objective.
62. I want to stress to you all that for the LSB, there is no pre-conceived notion of what the LSB’s work to further these objectives **should** look like. This doesn’t mean that we’re going in blind, but it does mean we will be reaching out, consulting widely, engaging beyond our traditional stakeholder base – we want to hear your views on

how these objectives can best be met, and I look forward to hearing your thoughts and taking any questions you may have. Thank you.