

WESTMINSTER LEGAL POLICY FORUM: NEXT STEPS FOR LEGAL ETHICS

Thank you very much. It's a great privilege to be asked to speak today.

I am Matthew Hill, CEO of the Legal Services Board. The LSB is the oversight regulator for legal services in England and Wales.

We're a statutory body established by the Legal Services Act 2007.

The Act sets out eight regulatory objectives that we and the regulators we oversee have a duty to promote. They include things like protecting and promoting the interests of consumers, protecting and promoting the public interest and supporting the constitutional principle of the rule of law. For completeness, there are also proposals for new regulatory objective on preventing economic crime before Parliament.

It's in the context of those objectives that we have been turning our minds to the question of professional ethics.

And this is of course against the background of growing public and professional concern in a range of areas connected to the question of legal ethics, where there is *at least* a perception and many might argue in fact a *reality* that failures in ethical conduct have led to public harm and damage to the standing of legal professionals on which public confidence is built.

I'm going to give some examples of the sorts of things that are, in my view, driving that public concern. It's a bit of a litany, I'm afraid, so I want to issue a disclaimer in advance.

It's this.

While we are all about oversight of the regulation of lawyers, we are not anti-lawyer. Anything but.

In our view, being a lawyer is more than just a job. Legal professionals belong to a group in which the public is invited to place its trust.

Lawyers hold in their hands the bricks and mortar of our safe and peaceful co-existence. They are entrusted by society with this precious cargo.

This should be a source of great pride and joy for all legal professionals. To know that as a lawyer you play this fundamental role on which society depends so profoundly. And when I say pride and joy I mean that in the sense of having an opportunity to fulfil a duty on behalf of society as opposed to the hubris that can sometimes come with chains of office.

But none of this happens by accident. It requires constant effort to build and uphold that public trust. Much of that is achieved by leadership from the professions themselves. But regulation also has a part to play.

Regulation sets and upholds standards. It governs education, training and competence. It sets a lead on ethical conduct. It controls the gateway into the professions and removes those whose conduct is not compatible with the high standards the public deserves.

Of course it also enables competition and choice, helps people find lawyers and decide where to spend their money. It can create a level playing field to protect responsible practitioners and businesses from less scrupulous competitors.

Properly deployed, it can create powerful transparency and meaningful lines of accountability.

It is precisely because we recognise and support the important role that legal professionals play that we think it so important to get ahead of public concern on matters of ethics. And it is more important now, I would argue, than it has ever been. *Some* would say

that the legal professions – and indeed the rule of law – are under attack in ways that we are not used to in the UK.

With that disclaimer out of the way, let's look at some examples driving that public concern.

I'm going to start with the Post Office miscarriages of justice. I'll pick out one comment from the social media in the run up to today's event which I think summarise the issue well. A law firm partner said and I quote "I do hope someone mentions the Post Office Scandal and the thousands of lives destroyed by two major companies aided and abetted by various internal and external lawyers. People got sick and some died. More will probably get sick and more will probably die. Almost the entire legal profession has remained remarkably silent". Well, I've mentioned it.

Broadening that out, there is growing concern amongst the profession itself, or at least parts of it, about the difficulties faced by in house counsel in navigating the many challenging conflicts they face. The SRA's recent thematic review in this area for me painted a picture of quite serious concern and one that forms a compelling case for concerted action.

Moving on, we are all familiar with perceptions, perhaps most memorably captured by the description of "Londongrad", that the major legal centres of England and Wales, particularly London, might be seen as being particularly attractive to those who might have reason to seek to avoid the disinfection of transparency. While some of that is undoubtedly unjustified, I think it is hard to claim credibly that there is not at least a germ of truth. Of course the war in Ukraine has thrown that into even sharper focus, particularly in relation to sanctions and AML, and has, for good measure, thrust the issue of SLAPPs much more obviously into the public limelight. I doubt anyone attending this event will want to identify strongly with the

use of the law to bully, harass and intimidate as opposed to seeking fair outcomes to legitimate disputes.

For good measure I ought to throw in the misuse of confidentiality agreements to silence victims of misconduct by powerful people, which leaves a decidedly nasty taste in the mouth, and the role of lawyers' conduct in enabling that to happen.

And then there is an even broader set of questions that many lawyers of all kinds are asking themselves about the ethical and indeed moral questions about working for clients of particular kinds. Climate change is probably the poster child for this question.

While I know there is a wide range of very strongly held views on the rights and wrongs of lawyers choosing who they will and will not work for, I make a confident prediction that the issue is unlikely to go away, and that not even the most energetic defence could credibly claim that there is not at least a debate to be had about the future direction of the profession and, as today's event suggests, the next steps for legal ethics.

So the first takeaway from my words, I hope, is that the time is now right for that debate to be had in earnest, with an acceptance that there are issues to be addressed rather than argued or indeed wished away. And that debate needs to encompass a broad range of voices.

At the LSB we are investing in a number of projects under the banner of "Professional ethics and the rule of law". We're expecting that to result in statutory policies and guidance covering a range of matters of interest. From the evidence gathering and conversations we have had so far with legal professionals, academics, civil society groups and others it is clear that there are enormous opportunities to strengthen and underpin ethical practice. It is equally clear however that the issues are complex and require a sophisticated response.

To take some examples from the engagement we have already had, people have told us about the need for greater clarity about lawyers' responsibilities when faced with difficult conflicts between client or commercial responsibilities and their professional responsibilities. They have told us about how reward systems for lawyers sometimes do not incentivise the right behaviours (and indeed might even encourage the wrong ones). We have heard about how a prescriptive approach to regulation and the sequestering of accountability in compliance teams might be taking too much personal responsibility away from practitioners. We have heard how poor ethical standards can become normalised over time as a consequence of a series of bad decisions that by themselves are small but whose cumulative effect is a significant divergence from good practice. I could go on. There is no shortage of diagnosis. But happily there is no shortage of passion and imagination when it comes to solutions.

We will be trying to capitalise on that positive spirit as we take forward the conversation about how regulation can help. You can expect our work to encompass a broad range of questions including those relating to education, training and onboarding; how support is provided to help legal professionals faced with untenable conflicts of interest; and how lawyers might be better empowered to ensure the right thing is done in the face of undue pressure.

At the same time, we are looking at specific areas where unethical conduct might be leading to bad outcomes for individuals and society. On that topic, we will shortly be launching a call for evidence on the role of lawyers' conduct in the misuse of NDAs. Over time I expect it to look at SLAPPs and other topics of interest.

In the meantime, we will continue to put every effort into making sure that legal services regulation is geared up to ensuring that the practice of law is universally and unequivocally a force for good in our jurisdiction. And as a very final thought, let me say that the LSB is open to contributions from anyone with an interest on this topic. If

anything I have said today has sparked any kind of interest at all, good or bad, please do get in touch with us.

I will leave my remarks there and wish you a successful and enjoyable event.

I'm happy to take any questions.