

Baroness Ashton's speech to the Conference on “Better Regulation of Professional Services”, Brussels - 21st November

Introduction

Good morning.

I'm delighted to be here today to talk about the future of legal services regulation in England and Wales.

President Barroso has said that the drive for better regulation is a “flagship” project of his Commission. The work Commissioner Kroes is taking forward is clear evidence of the commitment of his Commission to better regulation. And better regulation is also a key priority for the UK Presidency of the EU. So we welcome the Commission's actions so far.

The UK Government put forward its proposals for the future regulation of legal services in England and Wales in October – in a White Paper called “The Future of Legal Services: Putting the Consumer First.”

The Commission and the UK Government share a firm belief that creating a more effective regulatory environment will boost the competitiveness of the EU economy and deliver jobs for EU citizens. Through the work the UK Government is currently doing, we are putting the consumer at the heart of the legal services framework.

I know that there are concerns in Europe that the independence of the profession must continue to be at least as strong in the future as at present. But let me be clear on this point. Our proposals are not about creating over burdensome regulation. Our reforms are about better regulation. That is why our proposals include an express statutory obligation to respect the principles that underpin the independence of the legal profession.

These proposals actively promote the independence of lawyers with respect to forming professional associations. And they provide for the handling of disciplinary proceedings against legal professionals by their respective professional association. We have taken care to ensure they are consistent with our national and international obligations and with key international principles such as the United Nation's Basic Principles on the Role of Lawyers and the Council of Europe's Committee of Ministers' Recommendations on the Freedom of Exercise on the Profession of Lawyer.

So the reforms detailed in the White Paper strike the right balance between consumer needs and the independence of the profession.

The Proposals

I would like to take this opportunity to give you some more detail on the proposals of the White Paper. The White Paper builds on the recommendations made by Sir David Clementi following his independent review published in December 2004.

We propose:

- an integrated package of reforms that include, for the first time, statutory objectives for all partners in the regulatory framework;
- a Legal Services Board (LSB) to act as the single oversight regulator in legal services with day to day regulation being handled by authorised Front Line Regulators (FLRs);
- enabling unregulated services to be brought quickly under the supervision of the Legal Services Board;
- enabling the delivery of legal services in new and innovative ways; and
- a single independent Office for Legal Complaints.

Our proposals will deliver:

- greater consumer confidence;
- greater flexibility for legal professions;
- greater diversity within the legal professions;
- continued independence of the legal professions; and
- more effective competition leading to innovation and growth with its associated benefits.

Statutory Objectives

All partners in the regulatory framework will have seven clear statutory objectives. These objectives include maintenance of the principles of the legal profession, namely:

- independence;
- integrity;
- the duty to act in the best interests of the client; and
- client confidentiality.

The other statutory objectives are:

- to support the rule of law;
- improve access to justice;
- protect and promote consumers' interests
- promote competition;
- encourage a strong and effective legal profession; and,

- increase public understanding of the citizen's legal rights.

The Legal Services Board

Currently there are numerous oversight bodies, some of which are arms of Government, with few clear objectives and overlapping responsibilities. This causes confusion for consumers and legal professionals alike.

We aim to rationalise the system and therefore propose a Legal Services Board, which will be independent of Government and providers of legal services, to be the single oversight regulator.

The Board will have a full range of powers to ensure that it can provide the effective oversight that consumers need. Day to day regulation will be carried out by Front Line Regulators, such as the Bar Council and Law Society. To do this, the Front Line Regulators will need to be authorised by the Board. The Board will first need to be satisfied that the Front Line Regulators are fit for purpose. Front Line Regulators will need to demonstrate to the Board that they have appropriate governance arrangements. For many this will mean demonstrating a clear separation between their regulatory and representative functions.

We want to retain the best of the existing system. That is why we excluded one option that would have excluded the professional bodies from the regulatory framework. That option would have resulted in the professional bodies effectively reduced to being trade associations. The Government believes that maintaining professional bodies within the regulatory framework provides a strong counter-balance to concerns about the erosion of independence.

Protecting Consumers

Our proposals provide for the Board to bring currently unregulated services quickly within its supervision when necessary to do so to protect consumers. This will also minimise the potential reputational damage caused by unregulated providers. De-regulation where this would be in the best interests of the consumer will be possible.

Unfettered competition without appropriate safeguards may be damaging to both consumers and legal professionals. The challenge for the Board will be to get the balance right.

New and Innovative Ways of Delivering Legal Services

Consumers want the right quality of service at a fair price. Effective competition will deliver this. Our proposals will enable different types of lawyers, and also lawyers and non-lawyers, to work together on an equal footing.

This will enable:

- firms to recruit and retain a diverse range people with new skills and real talent,
- one-stop shops, which deliver legal and other services that better meet consumers' needs and provide them with greater convenience.

External investment will be permitted. This will deliver improved access to capital allowing firms to expand and take advantage of the latest technology helping them to compete more effectively amongst themselves, but also with the best firms internationally. It will also open up new markets.

The Board may grant additional authorisations to Front Line Regulators who want to regulate these new business entities. Such firms will be subject to a range of controls. These include a statutory requirement for rules to prevent conflicts of interest.

They also include a nominated Head of Legal Practice. This is a lawyer responsible for ensuring that the firm adheres to the rules of the regulator and that services are provided only by those properly qualified. The Head of Legal Practice will also be required to report to the regulator any violation or any attempted violation of the rules. There will also be a nominated Head of Finance and Administration who will be responsible for maintaining appropriate accounts, ensuring that the required administrative systems are in place, and ensuring separation and management of client funds. Neither the Head of Legal Practice, nor the Head of Finance and Administration, could be replaced without the agreement of the regulator.

Regulators will also apply a robust 'fit and proper' test to external investors. This will cover elements such as:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

Elsewhere in the world, legal professionals are already providing services through a range of business models. New South Wales in Australia is a particularly interesting example. In New South Wales there are some 70 multi-disciplinary practices licensed by the Legal Services Commissioner. The Commissioner's requirement for nominated individuals and proper management regimes results in fewer consumer complaints when compared to traditional law firms.

The Office for Legal Complaints

When things go wrong, complaints must be dealt with efficiently and fairly for the benefit of both consumers and legal professionals. I know this is a challenge in most jurisdictions. While efforts have been made in England and Wales, consumers have told us they need more. They are concerned about:

- independence (from the legal professions) of complaints handling;
- timeliness;
- consistency;
- clarity; and
- best practice.

Our proposals will establish a single, complaints handling body, the Office for Legal Complaints (OLC), which will be subject to oversight by the Legal Services Board, but independent of the Government and the legal professions. The OLC will introduce, transparency, independence and consistency in the handling of complaints and will be able to award quick and fair redress.

Professional bodies have a keen interest in ensuring their members act with integrity – and consumers generally acknowledge that. Under the new framework, the OLC will refer potential misconduct cases to the relevant professional body.

Conclusion

There can be no doubt that legal professionals play a vital role in the maintenance of civilised society. But the systems that regulate them need to be transparent to ensure the confidence of public.

Inspiring confidence in the consumer makes for a healthier and more competitive market. This need not threaten the independence of the legal professions. Independence is key to the role they play.

These reforms achieve both needs: placing the consumer at the heart of the legal services framework and safeguarding the necessary independence of the legal professions.

Thank you.