Dame Janet Paraskeva's Speech to Conference of the Society of Licensed Conveyancers

Wednesday, 18th November 2015

Well I didn't expect to find myself addressing a room full of lawyers ever again after I left the Law Society in 2006.

But it is a pleasure to be working in the legal sector again.

And it is very interesting to be a *regulator* once again.

This time though, I'm here as a pure regulator.

The CLC has none of the inhibitions or conflicts that arise when an organisation has representative as well as regulatory functions.

Which *was* the case when I was Chief Executive of the Law Society.

Nor do we face any of the challenges that still seem to beset other legal regulators because of their continuing relationship with a representative parent body.

Though we very much welcome the work of the SLC and their representation to us of issues affecting the regulated community.

Separation of representation and regulation means that the representative bodies are able to act robustly in defence and promotion of your interests.

And it means that, as a pure regulator, the CLC is able to focus clearly on its regulatory tasks.

Setting and assuring high standards,

Protecting the consumer

And helping the firms we regulate to innovate and find new ways to meet changing consumer demands.

I am grateful for that clarity in our purpose.

It means that we are able to be entirely clear and transparent in our dealings with you and with other regulators.

Legal Services Act

Returning to the legal sector, I was surprised to find that there is unfinished business from implementation of the Legal Services Act.

That is to ensure that other front line regulators of legal services are able to enjoy that same clarity that we do.

That needs to be through real and effective separation of representative and regulatory functions.

The principle seems to have been eroded since passage of the Act in 2007.

And it's a matter that we are taking up with the Legal Services Board, which bears the responsibility of ensuring that the Act is being exploited to the full.

But we are here today to talk about conveyancing services and their regulation.

When I took up the role of Chair of the Council for Licensed Conveyancers earlier this year I said that there is a lot to do.

That's not because the CLC was broken in any way.

It has an excellent track record.

And Sheila has spoken this morning about changes that are being completed now to keep the ship on that course.

The job now is to ensure that we can continue to support innovation and growth in the legal sector for the benefit of the consumer.

This means we must continue to explore the potential within our activity based regulation model.

Because specialist regulation of specialist law firms provides an alternative and contemporary model for regulation.

That alternative can help inform change and improvement across the legal sector.

Just as we can learn from the experience of the other regulators.

A diversity of approaches offers choice to the regulated community too.

Choice of the model that is best aligned to their practice.

That's some more unfinished business from the Legal Services Act.

Ensuring that practices can in fact make their choice of regulator as Parliament envisaged.

But there are some practical obstacles to that still - including the supposed need for run-off cover and interruption of access to lenders panels.

I will look at those in a bit more detail later.

This speech

What I want to focus on today are a few issues that have struck me as needing review.

They might seem like issues of detail in some cases.

But they are each having a major impact on the legal services market, not just the market for conveyancing and probate.

In each case they are arrangements that have grown up over time.

And for the most part we give them little thought – they are simply part of the landscape.

But I would like us to look at them with fresh eyes.

And ask whether what we've inherited is fit for purpose now.

Or whether some work is needed to build something new in their place to take the practice of the law forward.

Especially the provision of high volume or mass market legal services like conveyancing and probate.

Ease of doing business

Before we do that, I should mention that the government has a considerable new interest in conveyancing.

It's come about because of our ranking in the World Bank's annual Ease of Doing Business Report.

The time and cost of transferring property in the UK drags down our overall score.

We rank 45th in the world for ease of registering property when we have an overall rank of 6th in the world on all measures together.

So improvement on the property measure would make a big difference to our position on the international league table.

Now the cost element is largely because Stamp Duty is taken into account along with conveyancing fees.

I'm under no illusion about the impact that competition has had on conveyancing fees though, so I don't think there's much to be done there!

But the time element is something that can be managed through improvements to the process.

Not necessarily parts of the process that are controlled by conveyancers.

But everyone involved in the process can do something that could bring improvement.

If those of us in the sector can generate ideas for improvement we can be sure that we will have the help of government where it is needed.

So this is an opportunity for all of us in the sector to get changes made that we might have wanted for years. Changes such as the digitisation that is under way at the Land Registry streamlining the conveyancing process.

It could bring substantial improvements for clients and for conveyancers.

So if you see opportunities for improving the service to your clients, or streamlining an aspect of regulation – wherever that might be in the system – let us know.

We will pass them on.

And if they are changes that we can make as your regulator, we are especially keen to hear about them.

We will feed them into our work for the next year.

And that's what I want to talk about now.

Review of regulatory arrangements

The CLC is beginning work on a fundamental review of our regulatory arrangements.

Everything is in play.

No existing rule, guidance or historic practice will be spared examination.

This is not an exercise that we will do alone, locked up in a regulator's ivory tower.

Not that there's room for an ivory tower in our small shared offices just off Old Street roundabout in London anyway.

So as we work on this review, we will be looking for your insight.

We ran a survey recently to ask managers of CLC firms about innovation.

We also spoke to software suppliers.

We wanted to know about whether and how regulation might stand in the way of innovation.

This was to help us feed in to a Ministry of Justice Innovation Plan.

Now, it was a small sample but it seemed that ideas for innovation were most likely to be abandoned because the firm concluded they would not be in the best interests of the client.

There were fewer cases where CLC regulation was given as the reason for the idea not being taken forward.

So I am convinced that our review cannot simply be the kind of thing that politicians so often talk about as a bonfire of red tape.

By the way, the first mention of that I found was back in 1948! Harold Wilson was President of the Board of Trade and he promised a 'bonfire of controls'.

And Lord Heseltine was harping on the same theme in 1990.

So managing the impact of regulation is a bit of a Forth Bridge-style operation it seems.

Today, we want to understand what changes the regulator can make that will not simply reduce the regulatory burden but will actually assist you help you develop your businesses.

Without putting the interests of consumers at risk.

To do that, we need a conversation.

And we probably all need to do some thinking that takes us outside the current framework and considers entirely new ways of working.

How can regulation support innovation in the way you manage your businesses?

How can regulation help you improve service to clients?

In short, how can regulation support growth?

That might sound surprising coming from a regulator, but the CLC is different.

One of the primary purposes when Parliament established the profession of Licensed Conveyancer thirty years ago was to invigorate competition into the conveyancing market.

That is why I am so keen that the full freedoms promised by the Legal Services Act should be delivered.

And it is why we are embracing the new growth duty that is being placed on regulators through the Enterprise Bill that is currently in Parliament.

I want to start the conversation today by looking at some issues that need fresh thought in my opinion.

They are:

Financial protection of consumers, in the shape of Professional Indemnity Insurance and the Compensation Fund.

The impact of lenders panels on the market for legal services.

And finally, the thorny issue of what we tend to call in shorthand separate representation.

There are two parts to that of course.

Separate representation for borrower and lender.

And separate representation for buyer and seller.

Professional Indemnity Insurance

Let's start with what we call financial protection.

PII and the compensation fund.

And let's recognise that it has been a far greater problem for solicitors than for CLC firms.

The Master Policy has worked well in ensuring that all CLC practices can obtain Professional Indemnity Insurance.

The ability to opt out has been around for a few years, but was taken up in very small numbers until this year.

The arrival of a new scheme as a direct competitor to the master policy has shaken up the market.

And there's every reason to believe that its impact will grow in the 2016 renewal round.

And I should say now that there is no concern about this increased competition in the market.

But that impact is based on price alone so far.

There is no difference in terms between the two policies.

So what we have seen is not real innovation. It's not really a different way of providing protection for firms and their clients.

That's why we are beginning a discussion with insurers to explore whether in 2015 there is need and scope for significant change.

Because the current system has flaws.

Despite PII being mandatory for current practice and run-off cover being required for closing firms there is still a need for a compensation fund.

That places a financial burden on the profession through the contribution that you must all make to that fund.

And it creates responsibilities for the CLC because we operate the fund on behalf of the profession.

There's another problem with PII at the moment too.

If a practice chooses to move between regulators, it currently triggers a requirement for run-off cover even though the same people are carrying out the same work for the same client profile.

Just under a different regulator.

But a different regulator overseen by the same Legal Services Board.

That is a real and significant obstacle to the free choice of regulator envisaged by the Legal Services Act.

Now there are ways past this run-off obstacle on a case by case basis.

But moving between regulators should not be a matter of handcrafted, ad hoc solutions taking time and energy.

Although there will always be a need to take account of the different needs of individual practices.

It should be a matter of businesses being able to exercise easily the choice that the law gives them.

The ability to choose a regulator most appropriate for a legal business for the medium to long term.

For the benefit of the business and its clients.

The compensation fund too is an inheritance.

But just like the house you inherit from granny, it might be time for some renovations.

To bring the scheme up to date.

An idea that the CLC has championed is for a single compensation fund across the legal professions.

The big gains would be economies of scales and consistency of approach, bringing benefits to consumers.

If that finds no favour across the sector, there remains detailed work to do to complete our review of the framework for the compensation fund.

We consulted on ideas earlier this year and have more discussions to take forward with you, consumer groups and other regulators to complete that.

The aim is to strike a better balance between consumer protection and the burden of financing and managing a compensation fund.

Separate Representation

Let's look now at the two parts of the issue of separate representation.

The CLC has a clear approach about acting for both sides in a transaction.

This boils down to a requirement for informed consent from both parties and effective Chinese walls between the teams within a firm who are acting for buyer and seller.

The overriding requirement is for the practice to cease to act where there is a substantive conflict of interest.

We have seen, however, instances of this freedom being abused and failure to meet our requirements.

These are in relation, unsurprisingly, to sellers who are vulnerable for whatever reason, though that reason is generally financial. The seller finds themselves in dire straits and may feel pressured to do something that is not in their best interest.

So this is an area that we will be revisiting.

The other aspect of separate representation is of borrower and their lender.

This was an issue hotly debated by the Law Society of Scotland in recent years and it is a question that was raised recently by a major insurer.

The Scottish solicitors came down in favour of rejecting separate representation after a series of passionate debates.

And this probably reflects the fact that in the majority of cases the buyer's and lender's interests will coincide.

It is unlikely that there will be a substantive conflict between the borrower's and the lender's interests which would require a conveyancer to cease acting for both sides. And indeed as we heard from Barclays earlier today, it can be helpful to lenders.

But there are legitimate grounds for concern.

So what might we need to do, as regulators, conveyancers, lenders, to ensure that we can identify potential conflicts of interest between borrower and lender.

So that the appropriate separation of representation can take place.

It's a question that will need a lot of thought.

Lender Panels

And it brings me neatly on to my final topic, Lender Panels.

I want to be clear about one thing in particular.

The CLC understands why lenders want to manage the relationship with firms that act for them.

We understand that the lenders get insight to activity in the marketplace that might give rise to concerns.

Frauds being attempted with or without the knowledge of the conveyancer, for example.

So if a bank has concerns about a conveyancer, it is understandable that they might not wish to do business with them.

But we always urge banks to share their concerns with the regulator so that we can take the necessary and appropriate action following investigation.

Because that is the fair and transparent way to deal with the problem.

My starting point here is that any lawyer regulated by one of the front line regulators overseen by the Legal Services Board should have free and unfettered access to the legal services market.

So I think there are questions about lender panels that we need to examine.

Do they represent an additional quasi regulatory burden on conveyancers? Whether those conveyancers are regulated by the CLC, CILEx or the SRA.

Do they limit the client's choice of lawyer?

Do they constitute a barrier to market access?

Again, I was pleased to hear Barclays say earlier that they are keen to look for ways to broaden panel access.

Now here I should pause and note that CLC lawyers have not needed to use any kind of accreditation scheme like the Conveyancing Quality Scheme in order to secure panel access.

This is because they are specialist conveyancers.

But they still have the overhead of dealing with a range of panel management schemes and fees.

And that needs examination.

So let's work together on this and the other major issues I have outlined to deliver improvements for clients, conveyancers and lenders.

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