

Independent regulation of legal services

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Independent regulation of legal services

Why Independent?

Independent regulation of legal services

Because otherwise vested interests...

Drivers of change in the legal sector

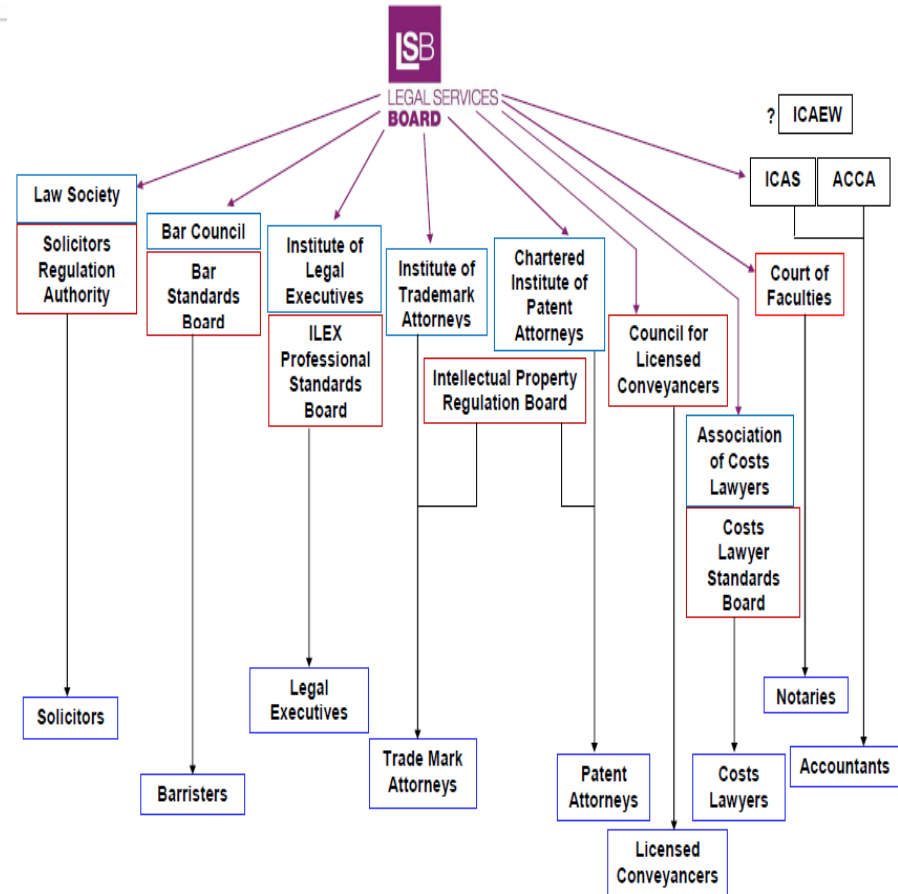
A lack of independence in regulation characterised by...

- Collapse of confidence in self-regulation
- Perceived anti competitive restrictions
- The ‘regulatory maze’
- Regulatory failure in complaints-handling
- Market developments

Result → Legal Services Act 2007.

One result of LSA 2007 → Legal Services Board

- Oversight regulator for the sector
- **Independent** of both the profession and government
- Paid for by levy on lawyers
- Duties and enforcement powers
- Small – staff of 30, budget reduced from £5m to £4.5



Priorities

First three years 2009-12

Liberalising ownership through *alternative business structures*

Establishing an independent Legal Ombudsman

Separation of regulation within professional bodies

Current priorities 2012-15

Improving and assuring performance of legal regulators

Simplification of regulation to support growth and innovation

Better consumer protection where needed

Back to independence – but independence from whom?

- Government?
- Parliament?
- Executive?
- Regulators?
- Courts and Judges?
- Professional bodies?
- Financial and legal business interests?
- Consumer and consumer bodies?

However...

*Independence does not
mean an accountability free
zone...*

The biggest risk to independent regulation...

Threat to regulators' independence from inappropriate professional interest

Why it matters...

- Competition and open market issues
- Public interest
- Proper administration of justice
- Rule of law
- Others?

The biggest risk to independent regulation...

Front line regulators are not wholly independent of professional interest

- Regulators' Boards dominated by lawyers
- Predominantly lawyers from that sector of legal market (solicitor, barrister, legal executive etc) involved at Board and exec levels
- Cultural ties and norms are those of the specific part of legal market
- Rule books are rooted in sector history and passported by legislation as 'good enough'
- Some lack of regulatory and economic understanding at regulators
- Still accountable to their master Approved Regulator/professional body
- Prevailing focus still on individual professional rather than entity behaviour

LSB independence also an issue?

LSB independent of Government and Professional bodies/regulators

- LSB is an NDPB, not a statutory body or non-ministerial department
- Government proposes legislation, appoints Chairman and Board
- Select Committees may undertake pre-appointment scrutiny next time
- Almost half LSB Board is lawyers
- Professional bodies' relationships with Government & Parliament
- CEO is Accounting Officer and so could be challenged by MoJ Perm Sec

Checks and balances that mitigate risk...

- Lay Chair and lay majority of LSB Board
- Nolan compliant appointment of LSB Chair and Board
- Lord Chief Justice approval of appointment of LSB Chair and Board

- Professional bodies have to separate regulation from representation
- Lay majority on regulators' boards, possibility of lay Chairs
- Decision about regulation made in line with better regulation principles
- Regulators share regulatory objectives
- LSB at apex of regulatory structure with significant duties and powers

Legal services regulatory objectives

Why it matters...

- Protecting and promoting the public interest
- Supporting the constitutional principle of the rule of law
- Improving access to justice
- Protecting and promoting the interests of consumers
- Promoting competition in the provision of services
- Encouraging an independent, strong, diverse and effective legal profession
- Increasing public understanding of the citizen's legal rights and duties
- Promoting and maintaining adherence to the professional principles

Current risks

Front line regulators independent of professions and professional bodies

- Capture by special interests
- Loaded Board make up
- Culture
- Structural complexity
- Legislative overlap

however...

LSB not worried about independence from Government

- Referral fees
- Damage based agreements
- QASA
- ABS authorisation
- Will writing
- Board appointments
- Government has not tried to interfere

Should we be worried about a threat to our independence?

- **Yes...** It's incredibly difficult, almost like running through treacle, to deliver a changed legal market
- **No...** running through treacle is something we've gotten very good at doing.