

How the Legal Services Act 2007 has Affected Regulation of the Bar

Abstract: This article from the Chair of the Bar Standards Board, Baroness Ruth Deech, considers the impact of the Legal Services Act 2007 on the regulation of the Bar.

Keywords: barristers; regulation; legal profession

Introduction

You can no longer open a legal publication or text book without the abbreviation LSA 2007 jumping out at you. What does it stand for and why is everybody so interested? Perhaps the reason is that the Legal Services Act 2007 (the Act) may in future be viewed as a pivotal point in the history of the legal profession. Its requirements are likely to change the types of lawyers with which we are familiar and the way legal services are delivered indefinitely. That may sound rather dramatic but it is indeed the truth.

I do not hope to cover all facets of the Act in this article, but I do wish to explain how the regulation of barristers came to be independent from that of solicitors, how this was affected by the Act and what we as the regulators of the profession have had to do to adapt and respond to the ever changing legal landscape.

Prior to the Act

Until 2006, the Bar had regulated itself through its professional and representative organisation, the Bar Council. At this time the Bar Council decided to split its representative and regulatory functions and created an independent regulatory arm, the Bar Standards Board (BSB). The BSB's remit is to regulate barristers called to the Bar in England and Wales in the public interest.

We are responsible for:

- Setting the education and training requirements for becoming a barrister;
- Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- Setting standards of conduct for barristers;



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- Monitoring the service provided by barristers to assure quality;
- Handling complaints against barristers and taking disciplinary or other action, where appropriate.

Our Board comprises 15 people. Nine of our members are barristers and six are lay people, but we will be moving to a lay majority in the near future. None of our members are members of the Bar Council or any of its representational committees. I have been privileged to Chair the Board since 2009.

Whilst the BSB is the independent regulatory arm, the Bar Council retains overall responsibility as the Approved Regulator.

The Act

The Legal Services Act strengthened and detailed the roles of these Approved Regulators, which were now permitted by law to regulate the supply of legal services. In addition to the Bar Council, the approved regulators are:

- The Law Society
- The Master of the Faculties
- The Council for Licensed Conveyancers
- The Institute of Legal Executives
- The Chartered Institute of Patent Agents
- The Institute of Trade Mark Attorneys
- The Association of Law Costs Draftsmen

In order to ensure supervision of the Approved Regulators, the Act created a new overarching regulator called the Legal Services Board. This board would be responsible for the upholding of the regulatory objectives enshrined in the Act, which are:

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- Protecting and promoting public interest;
- Supporting the constitutional principles 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.

The Act, with a focus on the consumer, also introduced the Office for Legal Complaints (OLC). The OLC was a single, independent body, which would deal with complaints made by consumers about the provision of legal services.

Thirdly, and perhaps most controversially, the Act permitted the formation of new business structures for firms providing legal services. This was a drastic move for barristers who had always been self employed or employed within a larger organisation. Initially, the Act permitted the formation of "Legal Disciplinary Practices" (LDPs), which were firms providing legal services that are managed by different kinds of lawyers, and can include up to 25 per cent non-lawyers.

How the BSB has responded to the Act

Following the introduction of the Act and extensive consultation, we made several applications to the Legal Services Board to change and relax provisions in the Code of Conduct that governs barristers' working practices.

Our first application arose from our decision in November 2009 to permit barristers to work as managers in Legal Disciplinary Practices (LDPs). We also allowed barristers to work in a 'dual capacity', which means to work in a self-employed and employed practice at the same time, to hold shares in LDPs and to work in partnerships.

Our second application, in relation to the structure of self-employed practice, also arose from BSB decisions in November 2009, and in many ways, complements our first application by enabling the Bar to offer services to consumers in a variety of flexible ways, including permitting barristers to: share premises and office facilities with others, investigate and collect evidence and witness statements, attend police stations, and conduct correspondence.

We also took the decision to make changes to Public Access following a review of the public access scheme in

2009. The changes were designed to enable greater direct access to barristers' services for consumers and permit barristers to offer services in a greater range of areas than before and to engage in correspondence between parties. We did not stop at these applications and have been busy ever since.

Our consultation *Regulating Entities*, released in 2010, sought to ascertain whether or not we should regulate Alternative Business Structures, which will be permissible by the Act from October 2011. The consultation was circulated far and wide and we hosted road-shows across England and Wales to notify the Bar. We received fifty responses and are currently in the process of analysing them.

Things have also moved on since the introduction of the Office of Legal Complaints and there has been a major restructure of the complaints system. We have been assisting with the introduction of the new Legal Ombudsman, the organisation that is now responsible for dealing with all legal service complaints. We, too, have restructured our internal Professional Conduct Department and they are fully equipped to deal with the changing regime.

While the aforementioned changes provide more options for barristers and their working practices, they also have the ability to increase competition and improve the service for consumers and that is why we are conscious of the need for increased consumer engagement. In 2010 we undertook a thorough review of our consumer engagement practices and I am pleased to say that we have now introduced our User Group, which represents users of barrister services. This group will have input to and be free to comment on, all policy changes going forward.

The future

As you can see, there are many developments taking place in the wake of the Legal Services Act 2007 and there are many more to come.

Whilst we digest the responses to the Entity Regulation consultation, we are already consulting on a revision of the Code of Conduct. The consultation is the fourth in a series, published from June 2007 onwards, designed to help shape the format and structure of the new Code, introducing new Conduct Rules and developing a new scheme for authorisation to practise.

We are also taking part in a fundamental review of legal education. This review is a joint effort between the BSB, the Solicitors Regulatory Authority and ILEX Professional Standards which, in addition to examining the requirements for those delivering legal education and those entering the profession, will build on the work we have already undertaken with regard to the Bar Professional Training Course and Pupillage. The core aims of the review are to ensure that the ethical standards and levels of competence of those delivering legal services in

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regulated law firms are sufficient to secure a high standard of service for clients and to support the public interest and the rule of law.

Another major project this year, which is also in conjunction with the Solicitors Regulation Authority and ILEX Professional Standards, is to introduce a scheme to quality assure the standards of advocacy for all criminal advocates. These standards and the scheme itself have been subject to consultation in 2010. The key components of the scheme are as follows:

- A levels based approach to quality assurance based on the Crown Prosecution Service model;
- Judicial involvement and assessment throughout the scheme;
- An independent body established to operate the scheme;
- Common advocacy standards;
- Periodic re-accreditation (at least once every five years);

- A procedure for referrals of inadequate performance by advocates.

We are also working with the other legal regulators to increase consumer engagement across the board; further details will be revealed soon.

Conclusion

In summary, the Legal Services Act 2007 has had, and will continue to have, a huge impact on the legal profession. In turn, this asks questions of legal regulation and challenges the regulators to adapt in order to facilitate the requirements of the Act. I have explained what the Bar Standards Board has done so far and what we have planned for the future, but I do not underestimate the path ahead. However, I can reassure you that we are up to the challenge!

Biography

Baroness Ruth Deech has been Chair of the BSB since January 2009. She studied law at Oxford University and subsequently lectured there for many years, specialising in jurisprudence, family, property, international and constitutional law. She was Principal of St Anne's College 1991–2004, an elected member of Oxford's governing Council, and also chair of the Admissions Committee. In 1994 Ruth Deech was appointed chair of the UK Human Fertilisation & Embryology Authority, and she also served as a governor of the BBC (2002–2006). From 2004 to 2008 she was the first Independent Adjudicator for Higher Education for England and Wales, responsible for resolving student complaints. An honorary Bencher of the Inner Temple, in 2002 she was appointed a DBE and in 2005 she was created a life peer (Baroness Deech, of Cumnor) and sits as a member of the House of Lords as a non-party legislator.

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