MASTER OF THE ROLLS

LORD NEUBERGER OF ABBOTSBURY, MASTER OF THE ROLLS

THE ETHICS OF PROFESSIONALISM IN THE 21ST CENTURY

INNER TEMPLE LECTURE SERIES

22 FEBRUARY 2010

(i) Introduction

1. This evening I am going to talk about the ethics of professionalism and in particular what it means in the context of a profession undergoing historically significant and profound changes. I thought it might be salutary to begin with the opening remarks of a report prepared by a special committee of the American Bar Association in 1970. The Committee opened its report into disciplinary enforcement with these comments:

   "*After three years of studying lawyer discipline throughout the country, this Committee must report the existence of a scandalous situation . . .With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically nonexistent in many jurisdictions; practices and procedures are antiquated; many disciplinary agencies have little power to take effective steps against malefactors.*"[1]

   Thankfully, nobody as far as I know (apart from Jeremy Bentham in his nineteenth century judge and lawyer-bashing moments, of which there were many) has ever written anything quite so scathing about the English legal profession's approach to professionalism, or to disciplinary or regulatory standards.

2. Disciplinary procedures are the enforcement aspect of professional rules and regulation, and, as such, they should reflect and form part of the ethical culture of any profession. More broadly, they reflect, and seek to maintain, accepted ethical standards. It is therefore fair to say that the attitude we take towards professional regulatory and disciplinary arrangements is a very good indicator of our attitude towards professional ethics. A lax disciplinary regime means lax regulation and a lax attitude towards professional ethics by those in practice.

3. This, of course, is not to say that strict, let alone very prescriptive, discipline is essential in order to have a properly ethical professional environment. It's not so much that sparing the rod will spoil the profession. It is more that where the professional culture is one which

[1] *American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, Problems and recommendations in Disciplinary Enforcement* 1 (1970) cited in *Professional Discipline of Solicitors in England*, Michigan Law Review [Vol. 75] (August 1977) 1732 at 1732.

explicitly or implicitly understands that the rod is unlikely to be resorted to, or can be easily dodged, there is no real incentive for ethical standards not to '*go gentle into the good night*', as Dylan Thomas put it. And if that happens we reach, as the theme of this lecture series suggests, the death of professionalism and, it should be said, the death of professions, and what a disaster that would be for society, civilised society, as whole.

4. I am not suggesting that the legal profession, its commitment to professionalism and ethical standards, is anywhere near the situation where life support is needed. We are nowhere near reached the point where a solicitor or barrister when questioned about his professional ethics – his morals – might say, in the style of Alfred Doolittle (the '*vigorous dustman*' from Bernard Shaw's *Pygmalion*)

   "*[Professional ethics.] Can't afford them, Governor . . .*"[2]

   If it ever does reach that point our commitment to the rule of law will have become nothing more than a remembrance of things past. But we should bear this in mind. The profession does face change, indeed historic change, whether welcome or not. And change brings new challenges. How the profession responds to the changes it faces will, to a very great degree, determine whether it remains a profession for the 21st Century, or passes into memory like the serjeants of Serjeants' Inn. I want to consider those changes and what they mean primarily for the bar and the solicitors' branch of the profession. I focus on the bar for obvious reasons, and on solicitors because, as you may know, until 2010 the Master of the Rolls was involved in the regulation of solicitors.

5. Specifically, I intend to consider the changes the profession may undergo in the coming years. Knowing what structural changes are, or at least may be, in store, is an essential precursor to understanding what ethical challenges could or might arise. I shall then examine some of those possible ethical challenges. Before doing so I should however thank John Sorabji, a member of this Inn, for helping me prepare this lecture. You should blame him for all the bad, boring or unpopular bits. I, of course, take credit for the rest.

(ii) The changing nature of the legal profession

6. I mentioned that we are at a time of change, indeed of profound change. Modern threats to professionalism and to effective and practical regulation come from many quarters – some of which paradoxically also provide, indeed are intended to provide, opportunities to support a properly ethical professional culture. In particular five factors can be readily identified, which pose both threats to professionalism and opportunities for the enhancement of an ethical professional culture.

7. First, there is the increased commercialisation and profit-orientated ethos imported from the United States. The intense focus on profit has the advantages of frankness and encouraging efficiency but it also leads to obvious tensions so far as maintaining professional standards is concerned. Secondly, there is the perceived supremacy of the consumer. Again, it is fair to say that the consumer expects honesty and morality, but the ethos of the consumer society is not necessarily ethical. And governmental and academic notions of what consumerism and competition require are not always realistic or practical and may sometimes even be counterproductive. Thirdly, there is the concern with process,

[2] Shaw, *Pygmalion* (1913), (Methuen) (2008 ed), Act II at 1020 – 1025.

which pervades modern life; process is important but not nearly as important as outcome. The concentration on appropriate structures and rules almost becomes a displacement activity in some quarters: it is so much easier to achieve goals and to measure success quantitatively if one concentrates on processes rather than qualitative outcomes – particularly when it comes to reputation, morality and professionalism. Fourthly, there is the modern obsession with reform. In this fast changing world it is of course necessary to change, but it is wrong to see reform as inherently good – it costs a lot of money, it increases uncertainty, and it causes confusion and loss of morale. Our ever changing world is a challenge, but our reaction to it should be principled, thoughtful and cautious. Fifthly, there is the blame game, or as art critic and historian Robert Hughes called it, the culture of complaint. If something goes wrong it must be somebody's fault. But it's too easy to forget that only hindsight provides 20 – 20 vision. All these five factors commercialisation, consumerism, proceduralism, change, and the culture of complaint contributed, for good and for ill, to the perception of a need to change the regulation, indeed the structure of the legal profession. They each pose a threat and a promise to professional ethics.

8. As a consequence of these five factors, Sir David Clementi's examination of the regulatory framework of the legal profession and his 2003 report[3], the Legal Services Act 2007 (the LSA) has paved the way for the most significant change to the profession since the 1880s. 19th Century reform saw the merger of proctors, who acted in the ecclesiastical courts, solicitors in equity, and attorneys-at-law, to give them their proper titles[4]. They were reborn as solicitors[5]. Those reforms saw the final triumph of barristers over serjeants-at-law[6]. From having five major branches the legal profession was cut down to two: solicitors and barristers.

9. Those 19th Century reforms must have seemed radical then; as radical as the passing of the Courts of Chancery, Common Pleas, Queen's Bench and Exchequer into the new Supreme Court of Judicature which took place at the same time. They no doubt left many practitioners at the time concerned about their future and the future of their professions. No doubt many of them, as Richard Lissack QC is reported to have said recently in respect of the changes which the LSA is bringing about now, were '*very nervous about [what was] going to happen to the bar*'[7] and to the wider profession. For some those fears came true, whereas for others reform presented opportunities. And before long what was once radical became the established position. An established position indeed which, as I've just mentioned, endured for over 120 years and under which many here, including me, enjoyed practice and prospered.

10. The LSA introduces reforms as radical as the 19th Century's. They pave the way for solicitors and barristers – and indeed trade and patent attorneys, legal executives, notaries, costs draftsmen and licensed conveyancers, all of whom form part of the legal profession[8] – to

---

[3] Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales – Final Report* (December 2004) (http://webarchive.nationalarchives.gov.uk/+/http://www.legal-services-review.org.uk/content/report/report-chap.pdf)

[4] Christian, *A Short History of Solicitors*, (1896) (Reeves & Turner) at 224.

[5] Supreme Court of Judicature Act 1873, s87.

[6] Supreme Court of Judicature Act 1873 s8.

[7] Lissack, quoted in Katy Dowell, *QC aspirants think again as LSA casts pall over bar*, The Lawyer (01 February 2010) (http://www.thelawyer.com/qc-aspirants-think-again-as-lsa-casts-pall-over-bar/1003297.article : accessed 05 February 2010).

[8] Cf Legal Services Act 2007, schedule 4, part 1.

work in partnership in exotic sounding organisations such as multi-disciplinary partnerships, legal disciplinary partnerships and alternative business structures – so-called Tesco law, with the new acronyms – MDPs, LDPs and ABSs. Indeed ABSs and MDPs pave the way for lawyers to enter into business with non-lawyers, such as estate agents; they pave the way for external investment in legal businesses: for investors to enter the picture, providing capital for investment and seeking returns on that capital. For solicitors, the traditional partnership may well become just one of many business models competing in a crowded market; so too for barristers, the traditional chambers model may become just one of many competing business models. You may well find yourselves practising at the self-employed bar, the employed bar, in an LDP, in partnership with solicitors and other lawyers, in a fancifully acronymed BoP – that is to say a barrister-only partnership – or, one day even in an ABS.[9]

11. These changes reflect the five factors I mentioned earlier. We should bear in mind that they need to be assessed not just by reference to those factors, and the public interest, but by reference to the only truly reliable piece of legislation or virtual legislation, the law of unintended consequences. I do fear that some – and I emphasise the word some – of the changes introduced will not have their intended beneficial effect or turn out to be in the public interest. An example which springs to mind, and is close to my heart, following the Jackson Report, is the change to civil legal aid in 1999, one of its purposes was intended to be saving the government money. Although the civil legal aid budget has been reduced as a result of the Access to Justice Act 1999 the total cost to the government of legal services has very substantially increased because it has to foot the bill for so many CFA uplifts and ATE premiums. But it is all very well to question some aspects of the changes, what is even more important is to address and prepare for the likely consequences of these changes.
12. These changes must, I think, have a profound effect on the legal profession, the profession you will shape in years to come. Their consequences will be profound. Entrepreneurial lawyers will take advantage of the new practice and business structures. New ways of working will evolve, often with outside investment acting as an additional catalyst. Some of these changes are already occurring, with the tentative steps by some law firms towards legal as well as administrative outsourcing. Commoditisation of work is likely to expand from areas such as personal injury work, into other areas. Greater use of modern technology will no doubt have further and more profound effects; as the cost-benefit, for instance, of remote working – common already for many at the bar – becomes more widely exploited by law firms, any new business structures and even the courts. The market will lead the way. I return in a moment to where the market may well lead us. Before doing so I want to say a few words about the structure of professional regulation.

13. The Clementi reforms did not simply reform the structure of legal practice. They also, importantly, revolutionised the regulatory environment: a revolution which though it may not – unlike proceedings in the Supreme Court – be televised is likely to have as profound effect as John Logie Baird's invention. Clementi reviewed a profession that was self-regulating. The Bar Council and The Law Society regulated the bar and the solicitors' profession. As Chris Kenny, Chief Executive of the Legal Services Board (the LSB) put it, with some justification it was a case of, '*chaps regulating chaps*'[10]. They did not just regulate

---

[9] BSB Press Release, 20 November 2009, *Bar Regulator Approves Fundamental Change*, (http://www.barstandardsboard.org.uk/news/pressarchive/774.html)

[10] Kenny, *The Paradoxes of Regulatory Reform*, (11 September 2009) (Oxford/Harvard Legal Symposium) at (8) (http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2009/pdf/speech110909.pdf)

the professions: they represented them too. Post-Clementi the era of chaps is over. Self-regulation combined with representation was consigned to the history books.

14. The Bar Council and The Law Society remain, in the language of the LSA, frontline '*approved*' regulators[11]. They have however had to strip out their regulatory functions from their representative ones; the former is now carried out on their behalf by regulatory arms: the Bar Standards Board, the BSB, and the Solicitors Regulation Authority, the SRA, respectively. The representative responsibility they retain. But who guards the guardians? That role now falls to the LSB: the new statutory regulator of regulators[12]. We have moved from simple self-regulation by representative bodies to a more detailed, more complex, and rather more expensive system..

15. There are further twists in the maze. Traditionally, professional regulation was focused on the individual lawyer. We are now also to have entity-based regulation. ABSs, for instance, will be regulated by an ABS regulator, which will, in all likelihood, be the SRA, although it remains an open question whether the BSB would become an ABS regulator. We are also moving from rule-based regulation to, what used to be called light-touch regulation, but in these post-Credit Crunch times is now known either as proportionate or principle-based regulation.

16. Underneath these new layers of complexity lies historical complexity. Rights of audience can be exercised by barristers, solicitors, law costs draftsman, trade and patent attorneys, ILEX members. The right to conduct litigation again can be exercised by more than one branch of the profession. The same activities remain capable of being carried out by different professionals, subject to different regulatory and disciplinary regimes, rules and some might say standards. I imagine the Victorian law reformers would look in wonder at all this duplication and complexity. They would have been surprised to hear, as the Joint Committee on the Draft Legal Services Bill's First Report put it, that

    "*One of the Government's objectives in reform was simplification of the "regulatory maze" that currently exists in the legal professions.*"[13]

    No doubt they would have been even more surprised to hear what Chris Kenny said recently: " . . . *adding complexity can create simplification*." I imagine they would not have been impressed with such a Zen-like paradox. I suspect they may have asked whether it could possibly be sensible to have seven regulators all regulating the same activity whether to the same standard or to different standards? They would also have asked whether such complexities were in the interest of the professions, the public interest or even in the consumer interest. The Victorian reformers thought it made no sense to have the same activity – acting as a solicitor – carried on by different professions, regulated by the different courts: law, equity and ecclesiastical. The parallel in the modern context is pretty plain.

17. There must be a strong argument for the LSB revisiting the present regulatory maze. Clarity, simplicity, consistency and regulatory efficacy would all appear to be better served by there being one regulator for the entire legal profession, or at least by regulation being activity-based rather than branch of the profession-based. As radical as this might sound to our 21st

[11] Legal Services Act 2007, s20.
[12] Legal Services Act 2007, s2ff.
[13] Joint Committee on the Draft Legal Services Bill, *First Report, Chapter 4, The New Regulatory Framework* (HC 1154-I, HL 232-I) at [106] (http://www.publications.parliament.uk/pa/jt200506/jtselect/jtlegal/232/232i.pdf).

Century ears, reform of this nature was something with which our Victorian ancestors appeared to have little problem. The idea of an effective sole regulator – dismissed by many as unfeasible – is something which is common elsewhere with no perceived problems e.g., in the United States.

18. I suspect that it is unlikely that the LSB will take such an approach at the present time. But time, the public interest, the interest of the professions and the market place, will tell. I think it highly questionable from a financial perspective to duplicate regulatory activity and cost, and to produce further cost by ensuring that the various regulators communicate and cooperate with each other to ensure that they have and apply common standards. It seems unlikely that such a system is in the professions' interest or indeed in the public or consumer interest, especially as such costs are inevitably passed on to the consumer. Duplication of regulation thus imposes another cost which decreases access to justice. Furthermore, the present arrangements hardly seem to represent the most efficient regulatory structure given their multi-layered, cross-jurisdictional nature, as complexity breeds inefficiency, as we well know.

19. One of the reasons for the Clementi-LSA reforms was to increase competition in order to increase access to justice. At least on the face of it, if we are to have genuine competition in this brave new world it will only take place where each branch of the profession is subject to the same rules, regulations and professional standards. Differences in any of these factors can be turned into competitive advantage. So regulators, acting in the public interest, could, and should, ensure that there are no such differences in regulatory approach. And if they took this line, what reason is there to maintain separate regulation? An even more telling point given that regulation is moving towards principle-based regulation. Surely the same principles apply or ought to apply to all branches of the profession and to all those who carry out the same regulated activities?

20. There is another reason why the present system may be inappropriate. The legal profession is, as I have said, likely to be populated in future by an alphabet soup of business structures some competing with each other, others complementing each other. It is likely over time however that that picture will coalesce into something we would all recognise from such staples of television viewing like LA Law, Ally McBeal, Boston Legal, The Good Wife – a US style lawyers' practice where all are lawyers, with some specialising in transactional work, others specialising in the conduct of litigation or advocacy, and others still doing something of everything.

21. It seems to me that one effect of market forces operating in the new regulatory environment will be something which has long been resisted here: de facto or de jure fusion of the profession. A modern truth that dare not speak its name. This may lead to the position where, as in other jurisdictions, lawyers are admitted as both solicitors and barristers: as lawyers. It will be for them, once admitted, to develop their individual practises and decide which representative body they want to join. Some will continue, as now, to work solely as advocates, others will continue to work primarily as solicitors do now. But those differences in individual practise will develop within a single profession. As fusion draws nearer, and for those of you entering into the profession now, I suspect it will come in your professional lifetime, the rationale for maintaining separate regulatory bodies will probably vanish. A united profession calls for sole regulation; just as principle-based regulation calls for sole regulation.

22. This is not to sound the death knell for the Bar. A modern democratic society will always require a group of dedicated, independent advocates to whom every individual, corporation, administration or government organ has access. Nor does this mean the end of the Inns, or The Law Society. The representative purpose will remain, and I am sure thrive, amidst such change: we need simply look to the New South Wales Bar Association to see the truth of that.[14] There will always be a need for specialist representative bodies, to represent those who predominantly or solely practise at the bar, just as there will always be the need for proper representation for those who carry out the conduct of litigation. And the same is true for trademark and patent attorneys, legal executives and all other members of the legal family. Representation shorn of regulation is something which can and would thrive.

23. Change then is very much on the way. A changed regulatory regime now, with possible, indeed likely, further change to come. These changes will inevitably present new challenges to lawyers and those who regulate them. The question for all regulators, consistent with the obligation imposed by sections 1(1)(h), 3 and 28 LSA, and professionals is how to ensure that in the new working environment all lawyers maintain a proper commitment to professional ethics. With that in mind I turn to a consideration of some ethical challenges which the profession faces now and may well face in the future.

(iii) Future challenges

24. In his review of the regulation of legal services, commissioned by The Law Society, Lord Hunt said this:

> "*What marks professionals out is a commitment to certain standards of behaviour, founded in ethics and best practice. Within the legal sphere, the concept of "reserved activities" now separates the professional practitioner – who is subject to codes of conduct and ethics – from the mere provider of legal services, who is subject only to the general law of the land.*"[15]

Those standards of behaviour have long been recognised by the courts. Sir Thomas Bingham MR, as he was at the time, famously discussed those standards of behaviour in *Bolton v The Law Society*[16]. While he did so specifically in the context of solicitors, he also stated that the same ethical principles and standards applied to both solicitors and barristers[17]. He also, famously, stated that every solicitor (and therefore every barrister) had to be a professional '*of unquestionable integrity, probity and trustworthiness*' who could be '*trusted to the ends of the earth.*'[18] Very strong words from the most respected judicial figure of my professional life time. Lawyers have to be capable of such trust because the public interest and public confidence in the profession – a profession whose independence, integrity, probity and trustworthiness is essential if we are to maintain our commitment to the rule of law – requires it. It requires it without qualification.

25. The overwhelming majority of solicitors and barristers can be trusted to the ends of the earth, or at least as far as the horizon. They are principled individuals, who act in accordance with their professional obligations. For barristers this means that they act regardless of their own interests or the consequences which may be visited upon them or others in order, as the

---

[14] http://www.nswbar.asn.au/index.php.
[15] Hunt, *The Hunt Review of Regulation of Legal Services,* (2009) at (25) (http://www.legalregulationreview.com/files/Legal%20Regulation%20Report%20FINAL.pdf).
[16] [1994] 1 WLR 512.
[17] [1994] 1 WLR 512 at 518.
[18] [1994] 1 WLR 512 at 519.

Bar Code of Conduct says, to '*promote and protect fearlessly and by all proper and lawful means [their] lay client's best interests*'.[19] For solicitors, it means as rule 1 of the Solicitors' Code of Conduct 2007 puts it, that they must '*not allow their independence to be compromised*', *that they must act* '*in the best interests of each client*', that the '*must uphold the rule of law and the proper administration of justice*' while ensuring that they do '*not behave in a way that is likely to diminish the trust the public places in [them] or the legal profession.*'[20]

26. The first ethical challenge for the future is to ensure that those who enter the legal profession continue to be individuals who are capable of being trusted to the ends of the earth. Professional regulation, whether by the Bar Council previously, or the BSB now under the LSB's watchful eye or the SRA, cannot as Lord Hunt put it '*cleanse people's souls by making them good instead of bad . . .*'[21] It cannot. But professional regulation, by maintaining scrupulous standards, can minimise the entry of the '*bad*' as Lord Hunt put it, into the profession. It must do so in a regulatory world moving from rule-based regulation to principle-based regulation. Will the path of regulation be a rake's progress or a pilgrim's progress?

27. While no regulatory regime could reasonably achieve the latter, none could acceptably even think of stooping to the former. The first challenge for our regulators then is to ensure that in the changing regulatory environment, they do not lower standards of entry into the professions. If they fail to do so, they run the very real risk of producing a profession which is incapable of that collective trust which the profession must rightly inspire and which underpinned Sir Thomas Bingham's statements of principle in *Bolton*. With this in mind I agree with what Hector Sants, the erstwhile Chief Executive of the FSA was reported to have said by Lord Hunt.

    "*The limitations of a pure principles-based regime have to be recognised. I continue to believe the majority of market participants are decent people; however, a principles-based approach does not work with individuals who have no principles.*"[22]

28. If a principles-based system cannot work with individuals who have no principles, it becomes all the more important that only those with principles are permitted entry into the profession. That is the first challenge. It requires regulators to maintain standards of entry into the profession. It also leads to a second challenge for regulators. It requires them to carry out regulation of those in the profession with equally rigorous scrutiny. This becomes all the more pressing in a world of MDPs and ABSs, where lawyers are in partnership with those who are not subject to the rigour of professional regulation and discipline.

29. There is, of course, no inherent reason why the advent of such new practice structures should undermine professional standards and professional ethics. Simply because, as Lord Hunt put it in the passage I quoted earlier, professionals can be expected and required to adhere to professional standards while non-professionals cannot, there is no reason to think that such new structures which mix the professional and non-professional should automatically result in a lowering of professional standards. There is no reason to think so,

---

[19] Bar Code of Conduct (8th edition) at [3.03] (http://www.barstandardsboard.org.uk/standardsandguidance/codeofconduct/).
[20] Solicitors' Code of Conduct 2007, rule 1 (http://www.sra.org.uk/solicitors/code-of-conduct/rule1.page).
[21] Hunt (2009) at (38).
[22] Sants, Speech at Reuters (12 March 2009) cited in Hunt (2009) at (38).

but there is a risk. There is a risk – even more than now – that the bottom line might place pressure on lawyers working in an ABS or MDP to interpret a principle-based regulatory code in a way which is more favourable to the bottom line than is proper.

30. The LSB could perhaps point to the Australian experience of ABS-type legal practices to show that this risk is minimal one.[23] It could, but I wonder what we can properly take from that experience. There are only, as far as I am aware, two Australian ABSs[24]. And they haven't been in existence for all that long. So what does the Australian experience really tell us? I think the answer to that has to be that the jury's still out, and on a sample of questionable substantial value. We just don't know. And if we don't know, we should advance with caution: the risks to the public interest are too great to be anything other than cautious.

31. Let me be clear, I am not saying that we should not enter the world of the ABS or MDP. Parliament has spoken on that point and has provided the statutory basis for real innovation in the way in which legal services are provided. The regulatory challenge is to ensure that these new structures do not *in fact* produce a reduction in professional ethical standards. It is a challenge squared by the introduction of a move towards principle-based regulation. The challenge facing the LSB, the SRA and the BSB is to ensure that these new practice structures and forms of regulation maintain the professional standards for which the English legal profession has long been rightly respected. Innovation is not to be feared or shied away from. But it should be approached with all due care and attention in the public interest.

32. This challenge is not just one for the regulators. It is a challenge for the regulated as much as the regulator. Regulators have their part to play, but so do the regulated. Individual solicitors and barristers will face future ethical dilemmas, for instance, the conflict between the commercial duty to maximise shareholder return and their professional duty to the court, their client or their independence. It will be individual solicitors or barristers who will have to ensure that they maintain their professional standards at all times no matter what their working environment is. It may not require them to tell truth to power, as has been said about government lawyers, but it will require them to ensure that no matter who they work with and for, and no matter what the practice structure, they always act consistently with their professional and professional ethical obligations.

33. If the individual lawyers do not ensure that they remain true to their professional duty, we face a mischief identified a long time ago, but as pertinent now as it was then. Over a century ago, someone wrote this:

    "*consider the mischief . . . that might be constantly done on a grand scale in society, if the vast majority of attorneys and solicitors [and for that matter we can add in barristers] were not honourable and able men [and women]; conceive them for a moment disposed everywhere to stir up litigation by availing themselves of their perfect acquaintance with every man's circumstances - artfully kindling instead of stifling family dissensions and formenting public strife; why, were they to do only a hundredth part of what it is thus in*

---

[23] For a discussion of the Australian experience see: Edmonds, *Legal Services Forum Keynote Address*, (14 May 2009) (http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2009/pdf/speech140509.pdf).

[24] Edmonds (2009) at (29).

their power to do, our courts of justice would soon be doubled, together with the number of our judges, counsel and attorneys."[25]

34. Regulators can only do so much. They need the commitment of individual lawyers to ensure that such grand mischief does not turn from warning to reality. If they do not the rule of law will become a thing of the past. An increase in such mischief is something which we all – lawyers, judges, regulators – must ensure does not arise as a result of the LSA reforms.

(iv) Conclusion

35. Where then does this leave us? A world where the only constant is change? Or a world where change is underpinned by a constant; an unwavering commitment to integrity, to professionalism, to ethical conduct?

36. If we are to have a legal profession in the 21st Century of which we, as a society, can be proud, we must ensure that integrity, professionalism and ethics continue to be the constant. The legal profession over the centuries has undergone many changes. It was born in this country with the attorney, and then the apprentice – the proto-barrister -, with solicitors, proctors, serjeants, barristers, King's and Queen's Counsel, legal executives, costs draftsman, licensed conveyancers, trade and patent attorneys, entering the story on the path to today. It has seen some of these elements of the profession pass into history. It has seen some rise to prominence only later to fade away. It has seen the growth of law firms nationally and now internationally. It has seen the growth of barristers' chambers from lodgings in the Inns to national, and indeed, international practices. And it will now see even more profound changes. As a profession is has maintained its professional standards throughout its history. It must, as I feel fairly sure it will, continue to do so now as it has done in the past.

37. The touchstone of the future for any regulator, just as it must continue to be for any lawyer, is that provided by Sir Thomas Bingham: that a lawyer must be capable of being trusted to the ends of the earth. That is the beginning and the end of professionalism. It is as correct a statement now as it was in the past. And it is as much a principle of professional regulation for the 21st Century, and the post-LSA world, as it was in the days of self-regulation. If you wish to find an ethics of professionalism, for the legal profession, for the 21st Century, you can do no better than to look to Bingham MR's statement of principle. Where professional ethics are concerned, back to the future is very much the order of the day.

[25] Christian (1896) at (232) – (233).