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# AN ACCESSIBLE LEGAL PROFESSION WORKING IN THE PUBLIC INTEREST: DREAM OR REALITY?

By GEOFFREY VOS\*

## Introduction

I WANT to start by thanking the Association of Law Teachers for inviting me to deliver this lecture. It is an honour and a privilege.

As Chairman of the Bar Council this year, I have focussed my attentions on two crucial areas: Access and Quality. Access, in the sense of ensuring that the profession is accessible to all talented people, regardless of their socio-economic or ethnic backgrounds; and Quality, in the sense of ensuring that the profession provides demonstrably high standards of service to the public in all areas of practice.

For reasons I shall seek to bring together in this lecture, I believe that these are the two areas that underpin the successful future of the legal profession in this country. This is not because we have a special English problem (though perhaps we do). It is because, in the end, we need to build a robust and resilient system that will ensure that we can continue to act successfully for our clients as lawyers in the different societal conditions that are likely to prevail as this century progresses.

To my surprise, at a meeting with the Heads of European Bars in Paris last week, I heard a French Bar leader objecting vehemently to two concepts which I believe the English profession takes for granted. The first was the idea that lawyers provide "legal services". The second thing he objected to was the idea that non-lawyers might be involved in making the rules that lawyers must follow. His message was that the so-called "independence" of the legal profession would be compromised if it were once acknowledged that lawyers did not hold a special and inviolable place in our Society. The public was best served, he implied, if it trusted that lawyers regulated themselves properly, and that they were entirely honest and straightforward. There was no need, he suggested, for procedures which allow consumer or business interests to check up that that was indeed the case. The new regulatory regime in England, encapsulated in the Legal Services Act 2007, was a special solution for special English problems, and nobody in continental Europe ever need envisage the kind of transparent regime that our new legislation favours.

Well, you may imagine that these sentiments made me feel as if I had entered a time warp, and that the position in Continental Europe was certainly very different from that in the UK. The reason for mentioning this story is that

\* Geoffrey Vos QC is Chairman of the Bar Council of England and Wales. This is the 36<sup>th</sup> Lord Upjohn Lecture, delivered at the Inns of Court School of Law on 7<sup>th</sup> December 2007.

it explains, in a way, the course that our professions have taken, and why they have taken them.

But, I do not think that my French colleague would disagree with me, when I say that, to have a successful legal profession, we must command the respect of the public.

The greatest problem that the English and Welsh legal profession has faced during the span of my professional life has been an *apparent* lack of public confidence in lawyers generally. There has, for a long time, been an underlying perception that the legal profession is self-interested and acquisitive. In part, this is caused by public and political scepticism about the performance of the professions generally; it takes only a few Enron accountants, or a few pension scheme actuaries, or a doctor like Shipman to taint all the professions.

The perception of lawyers of which I have spoken is, in my view, largely unjustified, but it has been damaging to the public confidence that I believe is so vital to the integrity of our legal system.

### Public confidence

So, with that introduction, let me start by examining the issue of public confidence a little more deeply. We need to distinguish between perception and reality. The popular press contributes, sometimes malignly, to perception. Reality is often quite different.

It is true that the popular press often speaks unkindly of lawyers. It concentrates on the amounts the very highest earners are paid, without balancing these figures against the reality that many lawyers are not well paid by the standards of many comparable professions such as medicine and accountancy. But we lawyers often take these slights too hard, and translate them—without a moment's consideration—into the conclusion that we are unpopular with the general public, that our work is not appreciated, and that we are all seen to be greedy spongers on Society. In short, we love to repeat the quote from the murderous Dick the Butcher in Henry VI part II: "*The first thing we do—let's kill all the lawyers*".

Our leap of reasoning from popular press to the reality of public perception is a gross inaccuracy. So far as the Bar is concerned, a recent survey conducted by Ipsos MORI for the Bar Standards Board established that 96% of the Bar's clients were satisfied with its services, and a high percentage was very satisfied. Even 60% of convicted imprisoned prisoners were satisfied with the barristers that had put them inside. And of the general public using barristers: 71% thought they were "*easy to speak with*"; 69% thought they were overall effective, 66% thought barristers understood their needs, and over 40% thought barristers were "*very intelligent*". About 27% thought barristers were "*trusted and highly regarded*".

It is not just this survey that suggests that we would be wrong to think that we are hated as much as we sometimes like to do. Anecdotal evidence too

indicates that those that have used lawyers are generally very satisfied with them, and that perceptions about lawyers generally are rarely considered by those using lawyers to apply to their own lawyers.

But a further aspect of reality is the fact that, in England, there are now some 18,000 complaints against solicitors each year, and that the failure appropriately to deal with this volume of complaints (many of which—by the way—are remarkably trivial) has led to a genuine feeling that lawyers have not demonstrated their ability to regulate their affairs properly, and certainly not sufficiently well to give the public confidence that their complaints will be expeditiously and appropriately handled if it is left to the lawyers themselves. Of course, I must mention that this does not apply to complaints made against barristers that are relatively few in number and rarely upheld. But that is the subject of another lecture another day.

So what is the conclusion? Lawyers are mostly seen to be doing a reasonable job for their clients, but there is concern at the way in which complaints are handled. The popular press characterises lawyers as overpaid (and sometimes greedy), but these accusations are generally ignored by the public, who do not regard their own lawyers as affected by what is said by the tabloids.

But none of this means that English lawyers can take my French colleague's view, and retreat to the practices of the 19th century.

### The business customers

In all this, we must not forget our business customers—I am sorry “clients”—calling clients “customers” causes paroxysms in the ranks of many traditional lawyers in the UK and Europe alike.

The business clients have a major part to play in what I am talking about, and the confusion between business, public and consumer law has a great deal to answer for.

In the UK, we have 150,000 lawyers, whilst in France, with a similar population, they have only some 60,000 (including notaries). Many of these UK lawyers are commercial lawyers servicing an international financial community in London. In Paris, the number of such lawyers is much smaller, as is the number of foreign lawyers practising in Paris and Berlin, as compared to those practising in London.

Our commercial lawyers are well-respected by their clients. This is not the same as being popular, but commercial lawyers are judged by their effectiveness and their economic value. And they too require a robust regulatory regime so as to add value to their services.

And this explains the vituperative approach of my French colleague. The French legal profession practises in small firms or as individual practitioners, and the big firms in Paris are often English or US enterprises. They are looking at a regime fit for their traditional kind of legal profession alone. The clients

they are primarily concerned with are not powerful, and historically have not spoken up.

### A vocal clientele requiring satisfaction

In England and Wales, on the other hand, lawyers have a very vocal clientele. This vocal clientele includes people from all parts of the community: Government (which is a major client of the legal profession, in crime—prosecution and defence, immigration, and many other areas), consumers, SMEs (small and medium sized enterprises) and major international corporations.

We ignore any one voice in this range of clients at our peril. And in recent years, they have been speaking with—pretty much—a single voice.

The Government was the main proponent of a regulatory structure in which consumers could have confidence. That is what led Lord Falconer to promote the Legal Services Act 2007. He pretty well ignored the business element, but that was perhaps because he judged that it could look after itself. About that, he was right.

Consumers in England hardly needed the Government to speak up for them. They have been as vocal as anywhere in the world. And, as it turned out, consumers argued their own case forcefully and effectively. They trumped all other users of legal services (I am sorry to be caught out using that term). And even though in economic terms in England and Wales, consumers probably account for less than 30% of the income of legal businesses generally, their voice was heard by Government above all others.

You may be surprised by the 30% figure—but it comes from the fact that criminals cannot properly be regarded as consumers. Nor can Governments, Local Authorities, Prosecution services, or Business users of legal services. That leaves the real consumer using conveyancing or litigation services, and the family client—all in all, 30% may well be an over-estimate.

As for SMEs, they were largely silent in the debate about a new regulatory structure—they were probably happy to allow consumers to win the day, and to benefit from a transparent regulatory regime.

International corporations regarded the debate as a parochial concern, knowing that they would buy whatever legal services they wanted, where and when they wanted them, at the best price they could negotiate.

So, to summarise, this was a case of the tail wagging the dog. The consumers punched above their weight. They brought about the new regulatory regime in the Legal Services Act in league with Government, whilst the business community looked on.

But that does not mean that the business clients in the UK are irrelevant—far from it. Their confidence in our commercial legal community is crucial. It drives London as the legal capital of Europe, if not the world, and it is the reason why our European colleagues react so loudly to the way in which we have dealt with what they want to see as a UK domestic problem.

Without overstating the case, in most European countries, things are not quite as extreme as they have been in England and Wales. They do not have an immediate consumer complaints problem, and they do not have a major commercial profession keen, or at least happy, to ensure that they can take advantage of transparent flexible regulatory procedures to allow legal services to be delivered in new imaginative ways at a competitive cost.

All this still means that, in England and Wales, public confidence drives the way the legal profession operates. No part of our profession can afford to ignore public confidence, even the commercial profession. And transparent effective regulation, ensuring that rules are effectively made and adhered to, is central to the successful provision of legal services. In short, we have a complex growing market in legal services. It would be quite impossible for such a market to succeed unless clients in all sectors were satisfied with the way the legal community operated. And such satisfaction was always going to be impossible to achieve without transparent structures, effective regulation, and, I am afraid to say, therefore, more costly regulation.

But I have still failed to explain why quality and access are so important, and why I made them the centrepiece of what I have been doing this year.

### Quality

The quality part is probably already obvious from what I have been saying. A legal profession that provides a poor service will never be successful. It will muddle along, because consumers in a small middle European state cannot do without local legal advice when they buy houses, sue their doctors, and so on and so forth. I should add that I am not to be taken as accusing the middle European legal profession of providing anything other than the best quality legal services—I am just pointing towards small legal systems within the European Union. But a legal profession that is muddling along—will never attract commercial work or the levels of public confidence necessary to expand its business internationally.

The English and Welsh legal profession, however, has a pressing urgency for public confidence. Public confidence will ensure that the legal profession gets an acceptable (if not enthusiastic) press, is seen as offering the best available quality of legal services, and can expand exponentially, without an unacceptable complaints handling system, or a general unpopularity, getting in its way.

To achieve this, quality controls need to be promoted to ensure that we are not continually scoring own goals. The profession is so large that quality controls can no longer be undertaken by Heads of Chambers and Senior Partners. Clear structures need to be in place to spot problems before they develop into serious losses of public confidence. And this is the same for consumer and business lawyers. Serious lapses by commercial lawyers are every bit as damaging as lapses by consumer or Government lawyers. They sap public confidence and prevent the profession expanding its success.

### Access

But why is access so important. This may be a rather British problem, though I believe that, even if it is, it does not justify the approach of my French colleague.

In England and Wales—though primarily in London—the legal profession is regarded as a privileged profession, and the Bar is regarded as coming mainly from the highest socio-economic groups. I do not want tonight to go over the reasons for this—or indeed what can be done about it. I am pleased to say that Lord Neuberger of Abbotsbury reported last week on “*Entry to the Bar*”,<sup>1</sup> and has made 57 recommendations for change, which the profession has accepted (or, I am confident, will shortly accept). These changes will make the Bar a more accessible profession, so that talented people from all socio-economic backgrounds, irrespective of privilege, will be able to succeed in obtaining places on the Bar Vocational Course, and in pupillage, based on merit and nothing else.

I digress to mention that two schemes in which I am passionately interested have already come into being. First, the placement of talented young people in the profession in Year 12 at school, when they have time to decide to read law, having first been exposed (often for the first time) to a professional environment. And secondly a soft loan scheme to enable students from disadvantaged backgrounds to pay the enormous cost of the BVC.

But why is any of this important? Of course, it is because public confidence is shaken by an elitist legal profession. More people now want to study law than ever before. This is not a coincidence. It is because lawyers are seen as a success story—contrary to some of the scaremongering stories that I mentioned earlier. People want to be part of a success story and many young people across the country are no exception.

But a success story that excludes people from particular socio-economic or ethnic groups rapidly turns into a catalogue of public opprobrium—or at least a tabloid onslaught. In 2007, people take notice if they are excluded from the preserves of the rich or the powerful. They take objection and offence. Our celebrities, our film stars, and our footballers come from all social groups. And so, to a large extent, do our doctors and our accountants. There are no barriers to entry. The barriers that the legal profession erected in times past are simply inconsistent with a successful profession moving forward with the public and the business community behind it.

### Public service

This brings me back to the concept of public service. A large percentage of aspiring lawyers enter the profession in order to help and serve others. They

1 Available on the Bar Council website at: <http://www.barcouncil.org.uk/news/newsarchive/120.html>

are motivated by public service and not by self-interest. They see the law as providing an interesting mainstream career, in which there are options to use one's talents in a range of areas—all of them supporting a high quality justice system in which the public interest is paramount.

Many, if not most, young lawyers, enter the profession intending to do publicly funded criminal, family or immigration work. Others are keen to lead the way in pro bono work for death row prisoners, or simply at Law Centres and Citizens Advice Bureaux up and down the country. Even the biggest firms promote and enhance the pro bono ethos, and all lawyers are now encouraged to regard pro bono work as part of being a lawyer.

I have recently campaigned for the lawyer's ethos of public service to be better recognised by politicians. We hear endless praise for doctors, nurses and teachers, but nothing is ever said to suggest that lawyers work to support a world class justice system, in which—again—the public can have confidence. I believe this is unfortunate, when there are proportionately just as many publicly funded and pro bono lawyers as there are publicly funded doctors, and, at the other extreme, quite as many highly paid private doctors as there are highly paid private lawyers.

I can share with you, I think, some evidence that our arguments are having some effect. After a rather brief meeting last week with the Lord Chancellor, Jack Straw, he sent me a letter in which he acknowledged the valuable international contribution that we lawyers make. We just need to make the same point at home.

If we could once get across that lawyers were public servants supporting a justice system, which is as essential to our Society as a good Health Service or good Secondary Schools, I believe we would have taken a great leap forward. Again, it comes down to enhancing the public's confidence in the services that we, as lawyers, provide. Of course, that confidence has to be earned. It cannot be taken for granted. That is why the drive towards ever higher quality legal services must be relentless.

### Conclusions

So, do we have an accessible legal profession working in the public interest? We have taken great steps towards achieving such a profession. We have identified the barriers to entry, and are combating them.

We have sought to ensure that the legal profession is, and is seen to be, operating in the public interest:

In regulation, we need transparency so that the public has confidence that lawyers are regulated in the public interest, rather than in their own interests.

In quality control, we need to take steps and establish structures that give the users of legal services, Government, business or consumer, confidence that they are receiving the best quality service available, at the right cost.

In terms of access, the public will never have confidence in a profession



drawn from a monolithic social group, so we must build an inclusive and diverse profession. As I have so often said, our profession must be representative of the community it serves.

If the public has confidence that we have tackled these areas, our profession will continue to prosper. It will be paid fairly, but not excessively, and we will be able justly to say to our European colleagues that we have, in reality, an accessible legal system working in the public interest.

Before I close, then, let me return to the European approach. I believe that the matters I have mentioned tonight are too important to be disrupted by petty jealousies or differences in the speed of development of legal professions across Europe. Public confidence in a legal profession cannot possibly be something we need only in England and Wales. And with communication and information transfer continuing to accelerate exponentially, I cannot see that the European legal systems will be able to deflect the aspirations of transparency and public confidence for very long.