

**Alan Mak**

# **Tesco Law: The Shape of Things to Come? Will Clementi be good for consumers but bad for lawyers?**

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My local Tesco stocks no less than six varieties of guacamole. Ten years ago, few had even heard of guacamole. Now, it's everywhere. Yet, in improving choice for the consumer, Tesco did not compromise on quality. Nor did it lose out: the first half of 2004 yielded record profits. This essay will contend that Clementi's proposed reforms will benefit both consumers and lawyers. As long as the promotion of "*competition [and] innovation*" is done in an ordered and sensitive manner, consumers will benefit from greater choice without a reduction in the quality of service received. Likewise, Clementi's ideas for a separation of the functions of both the Law Society and the Bar Council will create a regulatory framework that is truly independent, effective and responsive to the needs of both consumers and lawyers.

If "Tesco law" is shorthand for the provision of legal services by a greater number of providers, including familiar entities such as supermarkets, away from the rarefied and often intimidating world of chambers or a lawyer's office, this is to be welcomed. Greater choice for consumers, greater competition for clients, and the prevention of over-inflated prices should boost quality and consumer satisfaction. However, many consumers have little purchasing power, especially if their case is publicly funded, and they might not have access to greater choice, in reality. Similarly, some one-off users might find the post-Clementi plethora of providers confusing and intimidating. The entry of new providers into the legal services market to undercut generalist high street firms could sink many existing firms with legal aid contracts, reducing choice and access for those relying on public funding. Therefore, Clementi's final report should include safeguards to ensure greater choice and quality benefit *all* sections of the community. Nevertheless, his proposals for greater choice and independent regulation of the legal profession certainly benefit the consumer.

The creation of a new regulatory regime is perhaps the most dramatic of Clementi's suggestions. Consumers have everything to gain. Lawyers have nothing to fear. When the Lord

Chancellor surprised the legal world in July 2003 by announcing that legal regulation would not be spared as the government moved forward with its broader constitutional reforms, he may have been responding to a *Which?* Survey<sup>1</sup> which showed that of respondents dissatisfied with the quality of service they had received from their solicitors, only 40% complained to the Law Society. The main reasons being they felt there was little point in complaining to a body made up of yet more solicitors, or even, in one case, for "*fear of repercussions*". Clementi lamented that "*the legal services regulatory system is complex and fragmented*" because "*there is a wide range of regulators with overlapping powers and responsibilities.*" In addition to the Law Society and the Bar Council, legal executives, patent agents and trade mark attorneys had their own regulatory bodies. This lack of transparency confused the public and its unaccountability damaged confidence.

These bodies both regulated and represented. The Law Society and Bar Council created and enforced disciplinary rules, received consumer complaints, and decided the entry requirements needed to join the profession. But they also represented their members' interests vis-à-vis the State, consumers and other third parties. They campaigned for foreign bars to give practising rights to UK lawyers and pushed for higher legal aid rates. This conflict of interest, which prior to the creation of the Financial Services Authority also existed in the City, is untenable in the modern business environment, where accountability and transparency are important values. Nowhere is the maxim that not only must justice be done, but that it must also be seen to be done more valid than in the legal world itself. Solicitors and barristers should not remain immune. Clementi's idea for a new Legal Services Authority (Model A) to take over the Law Society and Bar Council's regulatory functions is a positive step forward. The old bodies would be left as representative institutions, and all parties would benefit from greater specialisation, effectiveness and independence.

Clementi's so-called "Model B+" is especially attractive. Whilst creating a LSB, it would devolve those powers down to the existing regulators, who would divide into two halves: regulatory and representative. Whichever model is eventually adopted, the ultimate power of regulation would be out of the hands of the Law Society and Bar Council. This would foster greater confidence amongst consumers, and ensure more effective oversight and scrutiny, whilst bringing the legal world into line

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<sup>1</sup> <http://news.bbc.co.uk/1/hi/business/3850515.stm>

with other sectors of the business community. In the past, the Law Society has often been reluctant to investigate malpractice in City firms, and recent investigations concerning *Allen & Overy* and *Freshfields* are the exception not the rule. A new regulator independent of the profession would have no such qualms. Higher standards would ensue, and both lawyers and consumers would benefit. Furthermore, Clementi's proposals for legal disciplinary partnerships (LDP), whereby both barristers and solicitors could go into business with other professionals such as accountants or consultants, satisfy long-running demand from lawyers for more sophisticated ways of doing business. The partnership structure is made more flexible, and lawyers learn from other professionals, improving their service to consumers. Consumers benefit by having access to a broad range of legal professions brought together under one roof. Law centres have operated successfully using a similar structure for years.

It could even be argued that Clementi merely accelerates the inevitable. The Law Society is already splitting itself into two. Its Council is becoming solely a representative body, divesting its regulatory remit. The Bar Council is also splitting into two internal divisions. However, this might not be sufficient. Self-regulation goes against modern business practices, representative bodies are no longer trusted to regulate, and "Chinese walls" don't always work. Just ask *Freshfields*.

The Clementi Review is bold and radical. It promises to deliver dramatic change to a legal world that is inherently conservative. Yet, long-term success only ever comes with change and improvement. The post-Clementi reality might be that improvements do not come quickly, but we should never be afraid of moving forward slowly; only of standing still. Clementi represents a win-win situation for both lawyers and consumers. Divesting the Law Society and Bar Council of their regulatory functions leaves them better equipped to represent their members, whilst bolstering consumer confidence. Greater choice for consumers should improve access to justice, whilst growing competition should raise standards and reduce costs. Change is worthwhile and inevitable in the modern world for it brings renewal and improvement. Just ask Tesco. Now they even stock guacamole.

