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

G.K. Chesterton's observation that "The reformer is always right about what is wrong... (but) is generally wrong about what is right." is an apt comment on Sir David Clementi and his report. While correctly identifying the regulatory problems which plague the legal services industry, the report's suggestions for alternative legal business structures are deeply troubling. This essay demonstrates the need to adopt regulatory reform, in line with the Clementi report, while dismissing changes to business structure.

The need for regulatory reform is clear. The Department for Constitutional Affairs, the National Consumer Council and the Office of Fair Trading have all vehemently criticized the current regulatory framework. The Legal Services Ombudsman concurs, concluding that only 53% of complaints were satisfactorily handled by the Law Society and noting an increase in unresolved disputes.

How best is this essential reform to be achieved? Currently the legal professions are regulated by their representative bodies. Consumer groups and the Government are naturally distrustful of such self regulation and back the report's proposals for an independent regulator.

While understandable this reaction is not justifiable. Certainly the abysmal performance of the OSS has undermined public confidence in self regulation, however the majority of self-regulatory bodies are highly successful. The Bar Council

in 2003 dealt with over 50% of its complaints within three months and received a 90% satisfaction rating from the LSO. Similarly the ombudsman has praised the Chartered Institute of Patent Agents for its "extremely thorough" investigative procedure and the Institute of Legal Executives for its "generally high" standards of complaint management.

Self-regulation also provides numerous advantages. Members of the legal services industry are far better qualified, by knowledge and experience, than independent regulators and have a personal interest in proper regulation. Moreover self-regulation is cost-effective, with many professionals undertaking regulatory work on a *pro bono* basis.

However, for self-regulation to be publicly acceptable, several reform measures are crucial. First, the number of lay representatives on regulatory boards and committees must be increased to ensure impartiality; second, regulatory standards, codes of practice and reasons for complaint verdicts should be publicly available to demonstrate a commitment to transparency and fair process. Finally an independent review board with credible oversight should be established with the power to force regulatory bodies to account for decisions, implement reform and impose sanctions.

The Clementi report proposes much to improve services for consumers but little to safeguard the ethical standards and independence of the legal profession. Legal professionals do more than provide a consumer product – they are integral to the "Rule of Law" and a distinction must be drawn between regulation of services and regulation of individuals. Regulatory reform should, therefore, include the transfer of

all regulatory power from the Government to the independent review board to ensure legal independence. Moreover regulators should be given specific mandates to uphold proper standards of conduct and ethics among the legal profession and investigate improper conflicts of interest.

Regulatory reform can be introduced for the benefit of both lawyers and consumers; reform to the business structure of the legal services industry can benefit neither. The report proposes three major reforms; to allow lawyers from different professional bodies to work in the same practice (LDPs); to allow lawyers and other professionals to practise together (MDPs) and to allow legal practices to be owned by third parties unconnected with the legal services industry. It is argued this reform will provide consumers with "one stop" legal solutions, available from a far greater range of premises than at present.

However the disadvantages of these reforms far outweigh any potential benefits.

Consider MDPs. From the lawyers' perspective MDPs pose a serious threat to ethical practice. The strict code of conduct followed by lawyers may not integrate with that of other professionals – creating either division and confusion inside practices or a compromising of standards. This problem is acute in the case of confidentiality, which binds lawyers but not necessarily other professionals and could not, therefore, be guaranteed in MDPs.

MDPs are no more desirable from the consumer's perspective. Restrictions or pressures over what products to buy and whom to employ might well occur, especially if practices insisted that all work remained "in-house".

The value of LDPs is similarly questionable given that their main aim, to provide a "one stop solution" for the customer, is already largely provided by solicitors.

Solicitors can currently perform conveyancing and advocacy – making unnecessary "in house" barristers or conveyancers.

LDPs and MDPs are no more attractive to the commercial consumer. In a post-Anderson environment MDPs are in very little demand; while LDPs would be unable to consistently supply the requisite level of specialist knowledge "in house". For commercial consumer, the current business structure is far preferable.

Of greatest significance, however, is the last Clementi proposal to allow businesses, such as supermarkets or banks, to own legal practices thereby making legal services more widely available and promoting competition.

However consumers appear satisfied with the status quo. Over 50% were critical of legal services provided from high street venues, some 10% fearing lower quality would result. Without a popular mandate this reform would be to no effect.

Indeed the underlying problem with this policy is that it fails to recognize the key asset of "front line" legal service providers – namely the great trust and confidence of the public, which supermarkets or other such venues simply do not possess.

Consumers, it would appear, prefer competence to convenience in the legal services industry.

The Clementi report is therefore of mixed value to both consumers and lawyers. Regulatory reform is the Tesco's of the report – it is innovative, beneficial and could meet both lawyers and consumers demands. Reform of business structure is the Sainsbury's – while aiming to modernize and increase efficiency, it ultimately offers a service which neither consumers nor lawyers want or will benefit from. Clementi should focus his attention on regulatory reform and leave the rest well alone.