

The Review of the Regulatory Framework for Legal Services in England and Wales
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15th December 2004

EMBARGOED UNTIL 10:30 am, WEDNESDAY 15th DECEMBER 2004

DAVID CLEMENTI PUBLISHES REPORT ON REGULATORY REVIEW OF LEGAL SERVICES

1. Sir David Clementi was appointed on 24th July 2003 by Lord Falconer to undertake a review of the regulation of legal services in England and Wales. The terms of reference are set out in Appendix 1.
2. As the culmination of this process, Sir David Clementi has today issued his Report structured under the same headings as in the Consultation Paper published in March 2004.
3. Sir David identifies three key issues arising from his review:
 - i) a concern about the current regulatory framework for legal services, in particular its complexity, inconsistency and insufficient regard for the consumer's interest;
 - ii) a concern about the current complaints systems, both as to how efficiently they are run, as well as the principle of lawyers examining complaints against other lawyers;
 - iii) a concern about the restrictive nature of current business structures which have changed little over a considerable period of time. They include a number of restrictive practices covering the way lawyers work.
4. To address these issues, Sir David makes 6 key recommendations. The key recommendations of the Report are:

The establishment of a new regulatory framework

- i) The Legal Services Board, a new legal regulator to provide consistent oversight of the front-line bodies such as the Law Society and Bar Council.
- ii) The Legal Services Board to have statutory objectives to include promotion of the public and consumer interest.
- iii) Regulatory powers to be vested in the Legal Services Board, with powers to devolve regulatory functions to front-line bodies, subject to their competence and governance arrangements.
- iv) Front-line bodies to be required to make governance arrangements to separate their regulatory and representative functions.

The establishment of new complaints systems

- v) The Office for Legal Complaints, a single independent body to handle consumer complaints in respect of all members of front-line bodies subject to oversight by the Legal Services Board. This should provide a complaints system which is easy to access and independent in dealing with consumer complaints.

The establishment of alternative business structures

- vi) Legal Disciplinary Practices, law practices which bring together lawyers from different professional bodies, for example solicitors and barristers working together on an equal footing, and permit non-lawyers to be involved in management and ownership. The safeguards to be proposed by the Legal Services Board should include a 'fit to own' test. Such practices should encourage new capital and new ideas in promoting cost-effective consumer friendly legal services.

Summing up his Report, Sir David said:

On the regulatory framework: *“The current regulatory system is focused on those who provide legal services. The new framework will place the interests of consumers at its centre.”*

“The current regulatory system is flawed. There are no clear objectives and principles which underlie the system, and it has insufficient regard to the interests of consumers. The current system of oversight of the front-line bodies such as the Law Society and Bar Council is confused.”

“I believe that the current governance arrangements of the Law Society and the Bar Council are inappropriate for the regulatory tasks they face. I am recommending that these bodies should split their regulatory and representative functions.”

On the complaints system: *“I believe there is a strong case for independent handling of complaints against lawyers. The new system will be independent and easier for consumers to access.”*

On alternative business structures: *“I do not believe that many of the restrictive practices under which lawyers work can still be justified as being in the public interest.”*

“The proposals I have made are facilitative; they are not mandatory. I accept that existing forms of business structures have strengths; I do not accept that other structures for the provision of legal services should not be permitted.”

“LDPs should bring many advantages. New investment should increase capacity and exert a downward pressure on prices. New investment should also be accompanied by fresh ideas about how legal services might be provided in consumer-friendly ways.”

TERMS OF REFERENCE FOR THE REVIEW

“To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector.

To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.

To make recommendations by 31 December 2004.”

BACKGROUND

Following publication of a Consultation Paper in March 2004 the Regulatory Review team received 265 written responses. During the 12 week consultation period the team held a number of meetings in England and Wales: in Bangor, Birmingham, Bristol, Cardiff, Exeter, Leeds, Lincoln, London, Manchester, Newcastle and Norwich. In addition the team attended many meetings organised by other bodies, a number of them organised by the Law Society in regional centres and two arranged by the senior judiciary.

MEMBERS OF THE ADVISORY PANEL TO THE REVIEW

Stephen Locke - Board Member National Consumer Council; member of Consumer Panel of the Financial Services Authority

Baroness Neuberger DBE - former Chief Executive, King's Fund; former member of General Medical Council

Neil Rickman - Department of Economics, University of Surrey

Edward Walker-Arnott - Consultant to Herbert Smith; former Senior Partner

Graham Ward CBE- Partner of PricewaterhouseCoopers LLP; former President of the Institute of Chartered Accountants in England and Wales; President of the International Federation of Accountants

Robert S Webb QC - General Counsel, British Airways; member of the Board of The London Stock Exchange

CONTACTS

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