

Legal Week

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Last chance saloon

The recent regulatory shake-up proposed by the Department of Constitutional Affairs looks set to herald a new era in the provision of legal services. Tony Williams looks at the implications of the proposed regime, for the profession itself and for its regulator, the Law Society

In July the Department for Constitutional Affairs announced a review of the regulatory regime for the legal profession, to be led by former deputy governor of the Bank of England and current Prudential chairman, David Clementi.

This is likely to be a far reaching and comprehensive review of the profession and, if it proposes radical solutions, will have long-term implications for the delivery of legal services in this country. Given the Government's reforming zeal, radical reforms are likely.

Two aspects of the review merit particularly close attention: the ability of companies not owned by solicitors to employ them to provide paid-for legal advice to the public — the so-called 'Tesco law' — and the regulatory role of the Law Society.

It is clear that in a modern society the role of regulation and indeed of the regulator is to promote the provision of a quality service by properly qualified individuals in a manner that is accessible to the public at a price set by effective market mechanisms. For legal services, a quality service includes the provision of 'best advice', confidentiality and the avoidance of conflicts of interest, either between clients of the same organisation or between the client and the organisation.

The recent dismal performance of The Accident Group, which was targeted by allegations of claims being exaggerated to boost sales targets, is abhorrent to us all, but it shows why legal services and associated services need to be properly regulated and operated professionally.

With the effective abolition of Legal Aid for most civil matters, a large section of the public is left without access to legal assistance at a price they can afford — or at least at a price they feel they can control. In addition, for many people, lawyers are remote and unapproachable individuals using terms the client does not understand. Potentially this massive market is one of the 'latent' legal markets Richard Susskind has suggested can be accessed by technology.

The Tesco law can open up this market in a number of ways. With the backing of a retail or financial institution, large-scale advertising would be possible. Legal information systems are increasingly sophisticated and accessible, and investment could ensure that these systems are truly state of the art. Online advice is already available for a range of matters, but currently a purely online approach is unlikely to be accessible to a sufficiently large market. Call centre technology may help. These are now a fact of life and it would be feasible, using good staff training, call centre technology and online legal knowledge systems, to provide a range of basic

but good quality answers on a range of legal issues. Basic documents could be available for a fee online or by post. More complex legal issues or those requiring follow up could be screened and passed through to specialist lawyers to deal with. These lawyers may be home workers available for certain hours every day or traditional law firms who sign up to agreed service level and charging arrangements. Fees could be collected via debit or credit card or even premium rate phone lines. Quality could be checked by the random recording and checking of calls.

A further development could be a lawyer based in a supermarket or financial institution (perhaps next to the optician) to act as a ‘duty solicitor’ outside normal business hours. They would have access to the same legal knowledge systems and to the relevant on call specialists.

This is not pure fantasy. Law Sure Direct, a group of London law firms, is already providing a call centre for initial litigation enquiries for an annual subscription. Hammonds Direct is bulk processing remortgage work in India. Personal injury firm Underwoods is planning a pilot scheme for a call centre in South Africa to deal with personal injury claims using lower cost South African lawyers. Indeed, niche insurance firm Plexus Law is considering how it can make its lawyers available within retailers.

Inevitably, these sorts of changes create many issues as to conflicts, best advice, confidentiality, file management and professional indemnity cover. But if the will is there these issues can be addressed in a way that safeguards the public interest and preserves the best characteristics of our profession. Any such change will have profound implications for the structure and financing of the legal profession. If this is successful, similar services are likely to emerge for small and medium sized enterprises, which face similar concerns in relation to affordable and accessible legal advice. Indeed, as this market matures the genuine ‘top end’ of the market, which so many firms insist they service, may become smaller and much more crowded.

In what could be a period of great turmoil in the profession it would be comforting if we had faith in our regulator and trade body, the Law Society. Unfortunately, we do not. In a recent Big Question poll (Legal Week, 24 July), 75% of the business lawyers polled rated the quality of The Law Society’s work representing business law firms as poor or appalling, and only 33% felt that it should continue to regulate business law firms. The only time the Law Society has made any impact in the national press in recent years has been related to the saga of the former vice president. Perhaps if it came out on video we might recoup some of the money — but alas none of the credibility — wasted by that affair.

The Law Society has looked at the role of MDPs and employed solicitors many times in recent years. It seemed delighted to discover that allowing MDPs may require primary legislation, enabling it to push the matter back to the Government. It could have initiated this debate. Instead it has been caught in a conflict of interest between preserving the status quo for its members and acting as a dynamic regulator in the public interest. It has failed both.

Unfortunately, this failure means we are likely to be exposed to a brand new, more costly and process-driven regulator. The cost of this regulator will be borne by the profession.

The more the profession objects to such a body the less influence it will have on its structure and operation. We should not feel persecuted by these changes. The Government relishes a culture of league tables, stakeholders, transparency and targets for all sections of society

(except, of course, for the Cabinet). The legal profession has appeared slow to change and the recent financial results of the major law firms enable the 'fat cat' slur to be applied despite the fact that this is clearly unfair in relation to high street firms.

In a recent poll most lawyers rejected any Tesco law-type reforms. But opponents will say you cannot expect turkeys to vote for Christmas. We need, as a profession, to articulate the value we bring and the service we provide and to ensure that these values and services are maintained and enhanced by any inevitable reforms. The Law Society is once again drinking in the Last Chance Saloon. Will it just stare into its beer while the reforms happen, or make a coherent and credible contribution to the debate?

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