

The Review of the Regulatory Framework for Legal Services in England and Wales  
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### REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES

Sir David Clementi today released his Consultation Paper relating to the regulatory framework for legal services in England and Wales.

He said: "The Consultation Paper published today seeks to stimulate a wide debate about regulation of lawyers. One of my key terms of reference is to propose a system which represents the public and consumer interest; so I hope to see a significant number of responses from those who are consumers of legal services, as well as those who are providers."

Sir David was appointed to undertake the wide-ranging Review of regulation of legal services in England and Wales by the Secretary of State for Constitutional Affairs on 24 July 2003.

On 20 October 2003 Sir David announced that he would focus his Review on five regulatory matters:

- issues relating to the current institutional structures and what the Department's Scoping Study referred to as "the regulatory maze";
- issues relating to the level of self-regulation and professionalism within the legal services industry;
- issues relating to the handling of complaints against lawyers and disciplinary matters;
- issues relating to unregulated providers of legal services and "regulatory gaps"; and
- issues relating to new business structures, including employed lawyers, legal disciplinary practices and multi-disciplinary practices.

The paper provides a brief Overview of the issues which are relevant to the Review. It then asks key questions under six headings, from Chapter A to Chapter F.

Chapter A concentrates on the objectives of the regulatory system. The central question in the chapter is: what are the appropriate objectives of a regulatory system for legal services; and how do important legal precepts, such as duty to the Court and duty to the client, affect such objectives?

Chapter B addresses the issues around the design of a regulatory model. It proposes a number of options. A central question is whether a regulatory system should see a clear distinction between the regulatory role of a professional body, where public interest issues should have primacy, and the representative role, where the interests of members have primacy. At present the Law Society and Bar Council combine regulatory and representative functions.

Chapter C concentrates on complaints and disciplinary issues. It looks at a number of different models and seeks to draw out the key advantages and disadvantages of each. At its heart is a question as to whether the mechanism for handling consumer complaints is better organised within the professional bodies, or outside, reporting directly to an independent Regulator.

Chapter D turns to more detailed issues about the regulatory system, including questions about the appointment of the Regulator, the accountability of the Regulator, the duty to consult and the appeals process.

Chapter E raises issues of the definition of, and regulatory gaps in, legal services. It sets out the current position as to what is within the regulatory net and what is not. The question of definition is one faced by any industry. In the financial services sector this was met by indicating, in the Financial Services and Markets Act 2000, the broad scope of activities which could fall under the FSA regulatory net, but with the Treasury being given powers to include other services. The chapter raises questions about the mechanism and criteria for broadening and narrowing the definition of regulated legal services.

Chapter F deals with the issue of alternative business structures. Central to the chapter is a distinction that needs to be made between Legal Disciplinary Practices (LDPs) and Multi-Disciplinary Practices (MDPs). LDPs are law practices which bring together lawyers from different professional bodies, for example solicitors and barristers, working on an equal footing to provide legal services to third parties. MDPs are practices which bring together lawyers and other professionals (e.g. accountants, chartered surveyors) to provide legal and other professional services to third parties.

In the case of both LDPs and MDPs it would be possible to permit a split between those who own the practice and those who manage it. Thus, under the heading of "Alternative Business Structures", one can set out a matrix of possibilities:

	<b>Managers and owners the same</b>	<b>Managers and owners different</b>
<b>LDPs</b>	A Practice solely offering legal services, owned by its Managers.	A Practice solely offering legal services, not exclusively owned by its Managers.
<b>MDPs</b>	A Practice offering legal and other services, owned by its Managers.	A Practice offering legal and other services, not exclusively owned by its Managers.

Chapter F asks questions about the demand for, and advantages and disadvantages of, each part of the matrix. This is important. Many lawyers who argue against alternative business structures do so by raising points against MDPs, and fail to address the issues of lawyers working together in LDPs.

Sir David has asked for responses to the questions raised in the Consultation Paper by 4 June 2004. He has indicated his intention to publish his report by the year end. He hopes for

the widest possible level of debate and response, both from providers and consumers of legal services.

Sir David has organised an Advisory Panel to assist him in preparing his Report, although he will remain wholly responsible for its recommendations. The members of the Panel are:

1. Stephen Locke - Board Member National Consumer Council; member of Consumer Panel of the Financial Services Authority
2. Rabbi Julia Neuberger DBE - former Chief Executive, King's Fund; former member of General Medical Council
3. Neil Rickman - Department of Economics, University of Surrey
4. Edward Walker-Arnott - Consultant to Herbert Smith; former Senior Partner
5. Graham Ward - Partner of PricewaterhouseCoopers LLP; former President of the Institute of Chartered Accountants in England and Wales
6. Robert S Webb QC - General Counsel, British Airways; member of the Board of The London Stock Exchange

#### **Notes to Editors:**

1. The consultation paper is available from:

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54-60 Victoria Street  
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It is also available from the Review's web site at:

**<http://www.legal-services-review.org.uk>**

2. The Terms of Reference of the Review are:
  - 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.