



JUSTICE

Draft Legal Services Bill

**JUSTICE Briefing for Parliamentary Joint Committee
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1. JUSTICE is an all-party law reform and human rights organisation dedicated to advancing access to justice, human rights and the rule of law.
2. JUSTICE wishes to comment on one matter alone in the Draft Legal Services Bill. This relates to the definition of the 'regulatory objectives' in clause 1(1). These are defined as:
 - (a) supporting the constitutional principle of the rule of law;
 - (b) improving access to justice;
 - (c) protecting and promoting the interests of consumers;
 - (d) promoting competition in the provision of [reserved legal activities];
 - (e) encouraging a strong, diverse and effective legal profession;
 - (f) increasing public understanding of the citizens' legal rights and duties;
 - (g) promoting and maintaining adherence to the professional principles.
3. The professional principles are defined in clause 1(3) as:
 - (a) that persons who are authorised persons in relation to activities which are reserved activities should act with independence and integrity;
 - (b) that such persons should act in the best interests of their clients; and
 - (c) that the affairs of clients should be kept confidential.
4. Thus, the draft Bill is based upon the model of multiple objectives used in the provisions in relation to sentencing in criminal cases contained in s142 Criminal Justice Act 2003. This lists a set of purposes to which a court should have regard for the purposes of sentencing. These are:
 - (a) the punishment of offenders;
 - (b) the reduction of crime (including its reduction by deterrence);
 - (c) the reform and rehabilitation of offenders;
 - (d) the protection of the public; and
 - (e) the making of reparation by offenders to persons affected by their offences.
5. The consequence of setting such multiple objectives is that necessarily the decision-maker has to choose the relative priority of each – as happens in a decision about criminal sentence. This multiple-choice approach to sentencing is often referred to as involving a 'smorgasbord' approach – involving a pick and choose approach.
6. This contrasts with the approach of the Constitutional Reform Act 2005 which, in section 3, requires the Lord Chancellor, Ministers of the Crown and others responsible for the administration of justice to 'uphold the continued independence of the judiciary'. This is one overriding objective. Section 3(6) then identifies further duties on the Lord Chancellor in upholding that independence.
7. The first clause of this bill should be rephrased so that the statutory purpose is to uphold the three professional principles (which are an excellent statement of the core professional obligation to hold the interests of the client as paramount). This should be followed by objectives in the way in which this should be done, using the provisions currently set out in clause 1(1)(a)-(f). This would give primacy to preserving professional independence.

8. The point here is important. The Bill introduces a Legal Services Board appointed by Ministers to regulate currently independent legal professions. The board and government are acting as proxy for consumers, many of whom the government considers have insufficient knowledge to make informed market decisions (eg Explanatory Notes, para 1.34). However, there is a danger that, in this process, the government may acquire powers that it might be tempted at some stage to use in order to further other political agendas.
9. Issues have arisen in other countries which illustrate this point. The structure of this Bill is only at all acceptable in a country with a highly sophisticated political culture that accepts the need for the independence of the legal profession and the judiciary. One would be concerned about these provisions in, say, an emerging or uncertain democracy. However, issues can arise even in the most sophisticated of liberal societies. For example, the Legal Services Corporation in the United States was required to refuse funding to any organisation that acted for illegal immigrants – even in relation to cases which the corporation did not fund. It is not beyond the bounds of imagination that some future government in the UK might want to require approved regulators of the legal profession to put constraints, for example, on acting for anyone who is an unlawful immigrant – either at all or beyond a certain point in their case. Arguments might be raised that this was in furtherance of at least one perception of the rule of law; allowed greater access to justice; protected citizens rights etc.
10. There must be no equivocation on the duty on all those undertaking reserved legal activities that, subject to their duties to the court (which appear to be retained in the obligation that they ‘act with independence and integrity’), such persons should act in the best interests of their clients and on a confidential basis.
11. Indeed, it should be explicitly open to a regulatory authority to state that such professional obligations may be applied to those acting in all unregulated legal activities. The point about lawyers is that they act solely in the interests of their clients and not that of the government or any third party, subject only to the maintenance of their probity. It would be surely disastrous if the kind of professional independence made famous by Atticus Finch in fiction and many a lawyer in real life were to be unintentionally sacrificed by this proposed legislation.

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