

« Tesco Law » – a threat to the rule of law?

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The recent atrocities in Paris underlined the importance of safeguarding the rule of law. As John Locke stated in 1690, *'Where-ever law ends, tyranny begins'*.

Lawyer independence protects the rule of law. It is not a lawyer's right, but the right of every citizen to obtain legal advice from a lawyer who is free from influence (by the State, retailers or otherwise).

Regulation protects members of the public when they rely on any professional. It is designed to ensure quality, punishing unprofessional conduct.

Those outside a profession can only make a professional assessment of **outcomes** – the service provided. Not *how* a profession can provide a quality service. That is where self-regulation comes in. Legal professions on both sides of the Channel can and should learn from each other.

The **Legal Services Board (LSB)**, set up by the Legal Services Act 2007, is the *'independent body'* responsible for [overseeing the regulation](#) of lawyers in England and Wales.

In reality, this Legal Services Board does not seem to be very independent:

- (1) Its website states: *'maintenance of the rule of law was thought [my emphasis] to depend on the regulation of lawyers being handled independently of government'* – why cast doubt on the importance of regulation protecting the rule of law?
- (2) The LSB is part of the **public sector** (i.e. part of the economy providing basic government services).
- (3) It is currently chaired by **senior civil servant** Sir Michael Pitt, who has a degree in civil engineering.
- (4) The LSB was chaired from 2008 to 2014 by David Edmonds CBE, a **businessman**, who was (and still is) the chair of a logistics company working for retailers.

Surely there is a conflict of interests here: a risk that retailers' or the government's interests will be put before the best interests of the public?

The Legal Service Board's Business Plan 2009/12, paragraph 13, states:

'We expect to see a shift in the power balance from the professional provider/client relationship to an empowered consumer/commercial provider relationship'.

So, the overarching regulator of lawyers in England and Wales thinks that lawyers are not professionals providing a service, but sellers of goods to consumers. How can the Legal Services Board regulate lawyers effectively when it so fundamentally misunderstands their role?

An independent legal adviser acts in their client's best interests, with a duty to tell them if they should not take legal action. Sellers of goods have no such a duty – on the contrary, they encourage consumers to buy as much as possible!

This 'consumer' approach of the Legal Services presents a danger to the rule of law—and therefore society—given that in England and Wales, retailers are now offering legal services ('Tesco Law').

Other problems arise when self-regulation disappears. The Law Society of England and Wales (representing some 140,000 practising solicitors), reached a compromise with the LSB, creating an '**independent arm**' [*have you ever seen one?*]. It is called The Solicitors Regulation Authority (SRA). The majority of its Board are **non-lawyers**. On paper, the Law Society itself remains the 'approved regulator', but the SRA imposed the unpopular '*outcomes-focused*' regulation (wanted by the LSB, of course!).

Rather than ending up with 'independent arms' run by non-lawyers with 'light-touch' regulation, I urge French 'avocats' to work out a way to improve self-regulation to the public's satisfaction.

As for proposals in France for 'light-touch' regulation of professions – have enough lessons not been learned from the banks?!

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