

# Wider Access, Better Value, Strong Protection

LSB Consultation Paper  
**BPIF Response**  
June 2009

## Introduction to the BPIF

*(Taken from a letter to James King, LSB, 24th March 2009)*

The BPIF has approximately 2,350 members. It is the largest single representative organisation in the industry

<u>Number</u> of	<u>Turnover</u>	<u>Employees</u>
<u>Companies</u>	Industry = £14.4bn	Industry = 158,000
Industry = 12,000	BPIF = £6.6bn-	BPIF = 87,000 -
BPIF = 2,350 (20%)	£7.1bn (45% - 50%)	97,500 (55% - 62%)

As a Trade Association, the BPIF occupies a unique position. Its raison d'être is to provide benefits in the widest sense of the word to its members and to the industry sector as a whole. It is accountable to its members and not to shareholders. Whilst commercial prudence is clearly of the utmost importance, profit is not the primary motivator for the organisation

## Need for innovative delivery of legal services

As 75% of our members have less than 20 employees we have a good understanding of the needs of small and medium size enterprises (SMEs) and the legal advice gap they experience. There can be no doubt that Directors of SMEs are often badly served by the current system of delivery of legal services with consequent effects on the legal system and on their own businesses

SMEs have a particular need for legal services provided in innovative ways because they do not have the following:

- The resources to employ in-house counsel
- The resources to properly inform themselves as to relevant legal issues
- The management expertise to deal efficiently with legal issues
- The financial resources to instruct solicitors

The BPIF's own informal research has found reasons given for SME's wariness of traditional legal advisers include:

- Lack of approachability
- Opaque and uncertain charging structures
- Lack of understanding of their particular sector
- Lack of timely and practical responses

As a result of the above:

- Disputes which could be solved quickly by early identification of issues drag on inefficiently
- Disputes arise due to ignorance of the law
- Negotiations are not concluded properly
- Proper legal documentation of agreements is not drawn up
- If litigation is embarked upon, it is dealt with unprofessionally, leading to delays and the disruption of the judicial process

This view is supported by research in 2004 carried out by the Small Business Council's evaluation of government employment regulations and their impact on small business; the Council was adamant in its assertion that "small businesses have a low awareness of employment regulations and see complying with them as a very low priority"

### **Benefits of innovative delivery**

The above issues could be tackled by the delivery of industry-specific legal services which are accessible through the BPIF, thereby ensuring:

- Members feel confident in approaching the BPIF in a way that they would not be in approaching other legal advisers
- The issue of fees is dealt with in a user-friendly manner; for instance fixed fees, "unbundling" of cases
- There is close cooperation between the various specialist advisers working in the Association, thereby establishing a "one-stop shop" for the users
- Issues which are common to a particular sector (for instance Intellectual Property in the printing industry) can be identified and managed by the Association as a whole, eg. by pressing for legislative change and/or educating the industry in avoiding the pitfalls
- Issues are controlled by a body (the BPIF) dedicated to improving and modernising that sector
- Methods of advice and representation are tailored to meet the needs of the sector

### **BPIF Legal**

The BPIF has employed qualified solicitors for the past 7 years. In that time it has become apparent that there is a strong desire amongst members to use their Trade Association lawyers. Currently there are 2 1/2 lawyers, two specialising in employment law and one in general commercial law. Telephone legal queries run at an average of 150 per month and Employment Tribunal and Commercial Legal caseloads are approaching capacity.

We would like to expand to meet an untapped demand from our members, but are restricted by rules preventing employed solicitors charging for their services. Thus we have run up against very clear resource issues. That would of course be resolved by the setting up of an ABS owned by the BPIF providing legal services to its members and others in the printing industry

BPIF Legal as it currently stands is frustratingly unable to provide the sort of legal service that our members should be able to expect. An ABS model enabling us to increase resources and thereby improve the legal services we offer is an exciting opportunity, and as such I would very much like to be involved in any consultation or other activities which you intend during the development phase.

**Question 1 -** *What are your views on whether the LSB's objective of a mid-2011 start date for ABS licensing is both desirable and achievable?*

**BPIF Response:** The timeline from the findings of the OFT in 2001 and comments after the passing of the Legal Services Act in 2007 (2 years ago) that regulation would not be in place until 2012 at the earliest have meant that although initial interest was high, some disappointment at delay has crept in. A mid-2011 start would re-galvanise activity in preparation for licensing, and BPIF approves this objective. However, if it is found to be too ambitious and therefore delayed further, this will have a deleterious impact and it would be better to aim now for a later start.

**Question 2 -** *How do we ensure momentum is maintained across the sector towards opening the market?*

**BPIF Response:** As above, by an achievable target date. Also by providing guidance as to the licensing regime as soon as possible in order that interested bodies may start to prepare in detail

**Question 3 –** *What are your views on whether the LSB should be prepared to license ABS directly in 2011 if necessary to ensure that consumers have access to new ways of delivering legal services?*

**BPIF Response:** If other licensing bodies are not ready then by reason of our response to Q1&2 it is essential that the LSB has a licensing regime in place to meet the target date. In addition, the fact of the LSB's preparedness may galvanise other potential licensing bodies

**Question 4 -** *How should the LSB comply with the requirement for appropriate organisational and financial separation of its licensing activities from its other activities?*

**BPIF Response:**

**Question 5 -** *How do you expect the legal services market to respond and change as a result of opening the market to ABS?*

**BPIF Response:** There is already evidence that consumer bodies (AA, Which, Coop) are availing themselves of the possibility of providing legal services to their members and it is the BPIF's view that they will be the leaders in this field.

**Question 6 -** *In what ways might consumers of all types – including private individuals, small businesses and large companies – benefit from new providers and ways of delivering legal services?*

**BPIF Response**

**Question 7 -** *What opportunities and challenges might arise for law firms, individual lawyers, in-house lawyers and non-lawyer employees of law firms as a result of ABS?*

**BPIF Response:** A new business model including corporate management, flexible working, homeworking, virtual offices and concentrated use of IT, together with the potential development of the notion of a "freelance" lawyer [Peter Rouse and Prof John Flood, *The Lawyer*, 27 April 2009], will prove attractive to many lawyers who find it difficult to fit into the traditional mould. Companies such as Keystone Law [<http://www.keystonelaw.co.uk/>] are an early indication of some of the possibilities

**Question 8 -** *What impact do you think ABS could have on the diversity of the legal*

*profession?*

**BPIF Response:** Business models such as those in Q7 above will be more attractive to those whose lives require more flexible working regimes. For example mothers (and, it is to be hoped, fathers) of young children. For those minorities currently under-represented in the legal profession, it may be that a further, different career path offers more opportunities

**Question 9 -** *What are the educational and developmental implications of ABS and what actions need to be taken to address them?*

**BPIF Response**

**Question 10 -** *Could fewer restrictions on the management, ownership and financing of legal firms change the impact upon the legal services sector of future economic downturns?*

**BPIF Response**

**Question 11 -** *What are the key risks to the regulatory objectives associated with opening the market to ABS and how are they best mitigated?*

**BPIF Response:** Reg Obj (h)Conflict : cross-selling pressure/interests of consumer and employer. Confidentiality: pressure to divulge information to employer  
REg Obj a)-d) & g) Decrease in visibility on high street; commercial imperative overtaking consumer interest and unchecked by professional principles. Lack of transparency for consumers ["Solicitors voice concern over advice line's links to probate business" Law Society Gazette 18th June 2009]

**Question 12 -** *Are there particular types of business structure or model which you consider to present a particular risk to the regulatory objectives?*

**BPIF Response:** The example of Claims Direct in the Personal Injury field should give pause for thought. Well established corporate bodies with brands to protect are more likely to be "safe havens"

**Question 13 -** *What conflicts of interest do you think might arise in relation to ABSs and how should they be managed?*

**BPIF Response:** See answer to Q 11. Management should be by clear separation of functions; HoLP and HoFA to be in senior positions within the entity with immediate access to the Board or equivalent; immediate support from licensing authority where potential conflict identified

**Question 14 -** *How should licensing authorities approach entity-based regulation and what are the main differences from the traditional focus on regulating individuals?*

**BPIF Response:** Lawyers will continue to be regulated by the SRA and the HoLP must be in a position to uphold their compliance. An outcomes-related strategy is more appropriate for non-lawyers without the experience of professional rules and who would find them too prescriptive. The marriage of the two

**Question 15 -** *Do you agree with our view that licensing authorities should take a risk-based approach to regulation of ABS, and if so, how might this work in practice?*

**BPIF Response**

**Question 16 -** *What is your preferred balance in regulating ABS between a focus on high-*

*level principles and outcomes and a more prescriptive approach?*

**BPIF Response**

**Question 17 -** *What are the advantages and disadvantages of a requirement on ABS to have a majority of lawyer managers?*

**BPIF Response** Advantage: an inbuilt understanding of professional principles and the need to comply. Disadvantage: Lawyers don't always have the management, marketing and corporate skills needed

**Question 18 -** *What are your views about how licensing authorities should determine whether a person is a "fit and proper person" to carry out their duties as a HoLP or a HoFA?*

**BPIF Response**

**Question 19 -** *What is the right balance between rejecting "higher-risk" licensing applications and developing systems to monitor compliance by higher-risk licensed bodies?*

**BPIF Response**

**Question 20 -** *How should regulators ensure a level playing-field between regulated legal practices and licensed bodies?*

**BPIF Response**

**Question 21-** *How should licensing authorities approach the access to justice condition, and do you agree that it is unlikely that many licences should be rejected on the basis of the condition?*

**BPIF Response**

**Question 22 -** *How should licensing authorities give effect to indemnification and compensation arrangements for ABS?*

**BPIF Response**

**Question 23 -** *How should complaints-handling in relation to legal services provided by ABS be regulated?*

**BPIF Response**

**Question 24 -** *How should licensing authorities approach the "fit to own" test and how critical is it in mitigating the risk to the regulatory objective of promoting lawyers' adherence to their professional principles?*

**BPIF Response**

**Question 25 -** *Are there any particular risks to the regulatory objectives that arise from could arise from ABS offering non-reserved legal services?*

**BPIF Response**

**Question 26 -** *What are the risks to the consumer associated with the delivery of legal services by special bodies and which more general risks are less relevant to these bodies?*

**BPIF Response**

**Question 27 -** *Is it in the consumer interest to require special bodies to seek a licence, and if*

*so, what broad approach should licensing authorities take to their regulation?*

**BPIF Response**

**Question 28** - *Are there any other issues that you would like to raise in respect of ABS that has not been covered by previous questions?*