

## List of questions

*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?*

**It is achievable but I would personally desire an earlier date for the following reasons.**

**It has taken 8 years to get from the original OFT report (2001), Clementi, Carter, the LSA 2007, to where we are today. This delayed implementation created uncertainty within the industry and has been detrimental both to the organisations involved in operating in legal services and in turn to the services offered to clients and lay-clients.**

**The world around the legal services industry has moved on in the last 8 years, any further procrastination would be undesirable; it is the uncertainty of change that creates problems not the action of change implementation. The change decision has been made, it is time for the industry as a whole to meet the challenges and new opportunities that this change brings.**

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

**The LSB should continue to be positive in their statements that this is going to happen in the way that has been set out.**

**In my opinion, the Bar represents less than 20% of lawyers but currently will create more than 80% of the resistance to this change; how this issue is dealt with will decide whether the project will maintain momentum or stagnate. I raise issues and solutions relating to this in Questions 5 and 28 below.**

*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?*

**I believe this would be a positive move. In my experience and opinion the BSB (Bar Standards Board) are currently poorly equipped to undertake effective regulatory responsibility to meet the requirements of the LSA2007 and implementation objectives of the LSB. Specifically there are issues regarding, Structure, Skills Gaps, and in particular Organisational Culture and it being so aligned to the Bar Council (BC).**

**The AR's and representative bodies have had 8 years to contribute and prepare for the changes of the LSA2007, if they choose not to be ready I believe this is detrimental to the interests of the Independent Bar and its Members.**

**I have less concern over the Solicitors Regulation Authority (SRA) that is now beginning to participate positively in the process of change (e.g. - [www.sra.org.uk/solicitors/code-of-conduct/guidance/1883.article](http://www.sra.org.uk/solicitors/code-of-conduct/guidance/1883.article)).**

**A new pragmatic approach to regulating the industry will simplify, clarify and improve the understanding of the regulatory requirements; however this needs the potential Authorised Regulators (AR's) to participate in the development process, be positive and clear about their strategy and accept the assistance and support offered where appropriate. If potential AR's do not engage positively then in my opinion they should not expect to be invited to the party; the logical fall back in this scenario is for the LSB to license ABS's.**

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

**I do not feel qualified to answer this question.**

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

**It is my concern that the Bar will resist the change in an attempt to keep the status quo, unless there is a change in their strategy. My interpretation of the Bar Council's policy, that I see as resisting the opening of the Legal Services Market, is detrimental to the Bar as a whole; resulting in the Bar being poorly prepared to meet the challenges and opportunities of an open market.**

**It is my analysis that the current approach by the Bar will lead to a significant reduction in the numbers practicing at the 'Independent' Bar, leading to its fragmentation. There were only c400 pupillages offered on the pupillage portal website this year against 561 actual pupils last year; a reduction of 28% and is less than half the number of pupils recruited annually just a few years ago (Bar Council website).**

**My greatest concern of the impact in reduction of the numbers practicing at the Independent Bar, in particular the Criminal Bar, is on the wider issue of our fundamental Democracy as a nation (the Independent Bar plays a fundamental role in our democracy and upholding democratic values which must not be lost). Whilst this should not be overlooked it is not a reason to halt the implementation of an open Legal Services market, but the Bar desperately needs help in formulating a strategy that is positive and constructive.**

**I believe, the greatest aspect holding Barristers back in being prepared for this change, at this moment in time, is the lack of Management Strategy expertise within the Bar Standards Board, the Bar Council and Barristers Chambers. The Bar must be encouraged to address this issue.**

**The larger Solicitor firms will and are reviewing the opportunities and will take them where appropriate. My concern lies with small to medium size firms who do not have the necessary expertise and are reluctant to spend money on recruiting quality managers, although I believe that, with time, market forces will ultimately lead them down a path of the diversification that is required.**

**Many see the entry of large professional non-legal organisations as a threat to the Legal Services, mainly due to a fear of lowering standards. I do not share this fear, indeed I feel these larger professional organisations should be encouraged to enter the market; however ensuring standards are maintained and dealing proportionately with any unscrupulous entrants to the market must be paramount.**

**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?**

**Generally, my experience of the administration within Solicitor firms and Chambers is woeful compared to commercial/corporate businesses; the quality of service offered generally to clients is poor particularly for those funded by the LSC budget. I believe Quality of Service (in the broadest sense) will become a key issue for differentiating between firms, to the benefit of clients. Quality of service will become a driving force as organisations compete for new clients and to retain existing ones.**

**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?**

**Skills gaps will be a challenge as organisations diversify and will require internal human resources to develop and train to meet the new job specifications/requirements/marketing/sales etc.**

**New innovative products will develop and diversification of services will flourish; however the monitoring of these products will need to be constantly reviewed by the regulators to ensure ethical standards.**

**Currently there are many professionals working within independent law firms and Barristers Chambers who are not lawyers and as a result are held back from personal development and from providing an input to positive services for customers; I believe under the new structure this will change although not without a battle.**

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

**I believe and hope with correct regulation ABS's will open the closed and discriminatory elements of the Market. My personal experience of working within the profession is that there remains a legacy from the 'exclusive club' where there is a lack of diversity, despite the improvements made over recent years.**

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

**There needs to be a review of the Bar Vocational Course – there were 1800 BVC (BSB website) students this year paying between £10k and £16k each (Review of course fees from providers), but with only 400 pupillage places (Pupillage portal) being offered this year and c6,000 (Estimation based upon previous 4 years BVC qualified Barristers minus Pupillages offered) unsuccessful applicants from previous years in**

**the market place for pupillages, this is wrong; I accept that competition is healthy but the BVC qualification is very narrow in its application and worthless in sectors other than Advocacy.**

**I also disagree with the Bar Council taking £345 per student from the tuition fees to fund the Bar Council, although I accept that some of this money comes back to assist students via supportive grants.**

**A review undertaken by the BSB in 2007 of the BVC consisted of 17 Barristers, 4 BSB employees and ONE lay client (BSB website) – this is not representative and was always going to keep things unsatisfactorily the same for students; in addition the minor recommendations made by the review panel are not due for implementation until 2010. This type of review should be undertaken annually and should not take 4 years to implement any changes.**

**In my opinion an independent review of legal education should be undertaken which should involve a major input from the legal education providers who seem to operate in a similar closed shop market to the current legal services. The skills required by Lawyers and Administrators within the new ABS's will need greater diversity and have an additional focus on customer service.**

**Objective CPD and not just tick boxing needs to be set out and monitored by the AR's as a means of improving quality and service.**

**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?**

**Under the more open ABS's with revised structures, better trained and qualified management I believe firms will have managers with greater financial and management skills that will allow these organisations to adapt better to the changing economic conditions.**

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

**I believe no major risks exist, other than resistance to the change. Smaller niche issues will arise with implementation. It is important to identify these issues and resolve them as they evolve. Access to justice will remain a significant concern and will need monitoring and managing.**

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

**The current 'non-entities' that are Barristers Chambers, many of which still pay no taxes on profits/surpluses or charge/collect VAT on services offered to Barristers are given an unfair advantage over solicitor firms and other organisations who will be competing within the burgeoning market for advocacy. This inequality needs addressing.**

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

**In theory it will be possible to have an advocate for the defence and an advocate for the prosecution within the same ABS leading to a conflict of interest; however this already exists within Barrister's chambers and it is dealt with through systems both people and computer based. I am not aware of any issue concerning a conflict of interest within a Chambers creating a problem that could not be satisfactorily resolved. More likely are conflicts of interests coming from people having represented a client previously for the defence and then being instructed for the prosecution (for example) – again systems exist for this. My opinion is that this is a red-herring used to resist change.**

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

**Firstly the LSB need to change the BSB's current strategy because as I understand it they see themselves as not regulating 'Entities' but regulating 'Individuals' (Hopefully this has changed or the LSB will change it).**

**The Bar Council and the Bar Standards Board need to work with the LSB in a constructive way to focus on developing the shift in regulating entities rather than individuals.**

**Regulating Entities rather than Individuals has a massive indirect impact on Barristers. Barristers Chambers currently exist as what I would refer to as 'Non-entities' due to the BSB's/BC's approach on regulating individuals, the impact of this change should not be underestimated by the Bar; the LSB/Industry needs to decide on whether these 'Non-entities' can continue to exist under the new regulatory framework, and if they do continue how can they possibly be regulated.**

**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?

**Yes, however it is important that the risks are correctly assessed and based on fact rather than perception. The AR should monitor complaints and identify trends that then require changes in the regulation or other intervention. This should be supplemented by other monitoring systems like feedback forms, client satisfaction forms, auditing and statistical analysis. There should be greater communication and cooperation between the Licensing Authorities and alternative industry regulators to learn and develop from their experiences, knowledge and systems.**

**Question 16** - What is your preferred balance in regulating ABS between a focus on high-level principles and outcomes and a more prescriptive approach?

**A prescriptive approach does not work; as you try to cover every single aspect by a set of rules you open up loop holes that can be exploited. It also leads in the legal profession to a very legalistic writing of rules that is not clear or easily understood/interpreted. It also leads to looking at the minutiae and missing the**

**holistic strategy. Having said that there is a need to get the balance right between principle and prescription – answering this balance needs to be addressed by another route other than this questionnaire in my opinion. It is so important there should be a working party set up of interested parties to address the issue.**

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

**I do not understand why there would be this requirement other than it being for the self preservation of the individual lawyers within the profession. It has overtones that Managers are in some way less trustworthy/capable than Lawyers – I disagree.**

**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?**

**I believe the SRA current questionnaire for LDP non-lawyers is sufficient and proportionate.**

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

**No view.**

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

**No View.**

**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?**

**I think Regulators and in turn ABS’s should demonstrate how they will proactively assist access to justice and that this should form part of the assessment for a license. I believe few applications will be rejected on this basis but licensing authorities should not shirk from rejecting an application if ‘access to justice’ is not a fundamental aspect of the submission.**

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

**Licensing authorities should ensure individual firms carry relevant insurance.**

**The current monopoly position of the Bar Mutual Indemnity Fund should be removed.**

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

**Auditing, trend identification and statistical analysis to pin point problem areas and proportionate intervention.**

**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?

**No view.**

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

**No.**

**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?

**The risks are the same in my opinion and so the regulation should be the same in general terms.**

**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?

**Yes. Same as an ABS – or it will become open to potential exploitation – i.e. set up a special body (unlicensed) create a customer base and then convert to an ABS or ‘sell’ on cases to an ABS.**

**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?

**My biggest concern is that of the current regulators ability to implement the requirements of LSA 2007 and their own personal agendas. Entrepreneurs who are currently reviewing the market opportunities are discouraged by the self-preservationist, disruptive, and non-cooperative approach of some Members and their representative bodies; which in my opinion is detrimental to them as practitioners, to the profession in general and in turn to clients and the services they receive.**

**The Bar in particular is lacking in Management skills, Training and understanding of commercial client service focussed organisations. The fact that good managers with the skills required by the Bar are being discouraged away when they try to support and assist the profession is a major area of concern that needs addressing if the Bar is to flourish in this new era and under the new requirements.**

**Whilst it may be argued that this falls outside the remit of the LSB it is my opinion that unless the management skills gap, I view, is addressed within Chambers, the**

**BSB and the BC then the profession will not be in a position to be regulated and that in turn this will become a significant stumbling block for the implementation of the LSA.**