

WIDER ACCESS, BETTER VALUE, STRONG PROTECTION

Legal Services Board (LSB)

Consultation on

Developing a regulatory regime for alternative business structures (abs)

Latest Return date 14 August 2009

1. Proposals

1.1 By mid 2011 the first abs licences will be issued. The hope is that a number of approved regulators will seek to become licensing authorities. LSB is intended to be an ‘oversight regulator’ with direct licensing powers. It is not clear who else would seek to regulate – potentially stakeholders such as banks and may be third party financial intermediaries such as Insurance companies or supermarkets who would themselves undertake legal services.

1.2 Regulatory process will require a shift in emphasis from the conduct of the individual lawyer, to the entity undertaking the legal services.

2. Implications for Land Registry

2.1 Land Registry’s registration business is largely conducted by lawyers, or, more properly, ‘conveyancers’ within the meaning of rule 217 Land Registration Rules 2003. This is defined as meaning; solicitors, licensed conveyancers and FILEX.

2.2 Land Registry places a good deal of reliance upon the fact and basis of the legal relationship between lawyers and their clients. So, for example, many application forms provide for the signature of the applicant or their conveyancer.

2.3 The same applies to safeguards introduced by Land Registry relating to identity evidence.

2.4 The principal reason that the system has developed in this way is that it has provided, at minimum cost to Land Registry a safeguard to increasingly clerical and automated aspects of creating and maintaining the title register. The professional bodies regulate their professionals, overseeing education and conduct, and ultimately in some circumstances, provide an insurance in the event that things go wrong.

2.5 Essentially it is these factors which justify and facilitate Land Registry’s increasingly accelerated registration processes. It follows that any relaxation and diversification of the present norms will require close monitoring and input from us. At the extreme end, if standards of training and regulation fell short of what we currently take for granted, we may need to give input into the licensing and regulatory regimes, perhaps even specifying minimum standards for entitlement to complete our forms on behalf of applicants.

2.6 Given the recent increase in fraudulent activity and the attendant claims on the indemnity fund, Land Registry will need to be consulted on any changes to the current regulatory arrangements to assure that we can approve the modifications.

3. Legislative Implications

3.1 Under the current Land Registry rules if the various "qualification requirements" are passed the registrar is obliged to grant a Network Access Agreement unless the applicant or a connected person had been a principal in a firm which had been the subject of an intervention in the last three years or the principal is the subject of pending disciplinary proceedings or has had a charge proved against him in disciplinary proceedings in the last three years.

The Rules define what is meant by disciplinary proceedings by listing the existing disciplinary tribunals. It is possible that new disciplinary tribunals will be introduced by new regulatory authorities which may require us to add to our list.

3.2 Certain registered European lawyers (as defined in (f) of the definition of "conveyancer" in rule 217(1) of the Land Registration Rules 2003) can give certificates, complete applications and so on in the same manner as solicitors.

It is likely that changes will have to be made to the definition of "conveyancer" and certain application forms and rules. While the drafting itself is unlikely to take very long (provided the policy is clear and capable of implementation by rule), the process of having rules made by the Minister (if he agrees to them) can take (where there is formal consultation) roughly between twelve and eighteen months from drafting to implementation.

4. Conclusion

The proposals are not modest, and if seen through will have a significant impact upon Land Registry and our stakeholder community with the potential for making huge changes to our way of working. We therefore see the need to work closely with LSB and potential regulators and licensors to allow us to see emerging patterns of potential suppliers of conveyancing services and so help us build what is potentially a very different working relationship. This seems best secured, if at all possible by membership of another stakeholder group which we recommend must emerge in response to the consultation, if membership of the current 'stakeholder interest group' is inappropriate

Land Registry's response to the LSB discussion paper:

Wider access, better value, strong protection.

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 not for Land Registry to comment on the policy, but if the date is to be achievable, it needs to take account of a number of issues, including potential changes to Land Registry legislation.

We estimate that a reasonable timetable for changes to Land Registry rules is eighteen months.

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

It is important to maintain engagement across all stakeholders, including ourselves.

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?

This is a matter for LSB but Land Registry are keen to ensure that there is no drop in standards given our great reliance upon solicitor's certificates to facilitate the registration process.

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

This is not a matter for Land Registry to comment on.

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

This is not a matter for Land Registry to comment on.

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?

There is the potential for the new providers to engage with stakeholders such as ourselves in novel ways.

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?

This is not a matter for Land Registry to comment on.

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

This is not a matter for Land Registry to comment on.

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

This relates to our response to question 1 above. It is absolutely vital that educational and training standards are set and maintained at the current levels as a minimum. Our concern is with conveyancing standards; we could potentially conceive a role for ourselves here, either in relation to the Land Registry qualification or as an audit function.

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?

This is not a matter for Land Registry to comment on.

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

Educational and training standards are not maintained leading to high error rates and there is a greater risk of fraud. Part of the mitigation will be a close monitoring of overall activity, including continuing professional development, audit checks and data sharing arrangements with law enforcement agencies.

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

This is not a matter for Land Registry to comment on.

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

If the ABS is acting for a related party, such as a surveyor, insurer, developer, estate agent, lender or seller.

There would need to be strict written guidance, emphasizing the need for early disclosure to all parties.

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

Although the entity is the regulated body, we and others will need to understand who it is who can bind the entity. With a legal partnership, agency principles are straightforward to apply. Who will have the authority to bind a large corporation and will they need their own individual regulation for that purpose?

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?

We are opposed to any action which has the effect of potentially lowering current high standards.

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

The current system which has become progressively cheaper and quicker is based on the prescriptive approach.

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

This is not a matter for Land Registry to comment on.

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?

We welcome this additional safeguard and assume that such a person/s will have a higher threshold to cross in terms of their accountability and qualifications.

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

Please see reply to question 15 above.

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

There needs to be some sort of independent reviewer body to whom legal and licenced practices can refer in the event of dissatisfaction. This could also fulfill a compliance function in relation to both. They would therefore need to be given certain powers.

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?

This is not a matter for Land Registry to comment on.

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

Land Registry views the current arrangements as workable, and would not want to see any lowering of thresholds. It may be possible to argue however that

certain large organizations would not necessarily need to hold the same levels of insurance cover given their levels of financial liquidity. This would need to be properly assessed and monitored.

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

There needs to be a transparent and clear customer complaints process which must signpost an independent reviewer who has appropriate measures for awarding redress.

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?

This is not a matter for Land Registry to comment on.

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

It would make it more difficult to set and police standards in different areas of legal services.

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 danger is the temptation to stray beyond areas of particular expertise. On the other hand this may be less likely than with, say, a general legal practitioner.

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?

This is not a matter for Land Registry to comment on.

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?

None other than appear in the attached paper and as discussed with you previously.