

## Response to the Consultation Paper 'ABS's: approaches to Licensing

I write this short response only in relation to the issue regarding 'access to justice' which seems to be one of the main threads causing the most controversy.

I believe that there are calls to place a stringent condition on the licensing of any new ABS, relating to its commitment to access to justice, a condition that would not be similarly placed on any new law firm wholly owned by lawyers.

The fear expressed is that a very well funded ABS could physically set up in a locale, cherry-picking only profitable areas of legal work, forcing more general legal practices in the same area out of business, thus reducing the possibility of the local population being able to have access to the more general legal advice

Whilst I have some sympathy for this view, I think that unless the policy is well thought out, I believe that the legal services market could become distorted with one sector handicapped in some way.

There are clearly factors which make the whole issue more complex that at first sight:

1 Should there be obvious discrimination between a newly formed law firm wholly owned by lawyers, and a non-lawyer owned ABS? The theory is that lawyers are more likely to offer a 'rounded' service, but what about the specialist firms which establish in specific areas [PI, Conveyancing, employment etc]?

2 The current LDP's would have to become an ABS. Would they have to satisfy any new conditions, even though they are likely to be different to other law firms only in the participation of a non-lawyer manager up to 25%?

3 The proposition envisaged assumes a physical presence in a particular locale, but an ABS established to undertake PI or conveyancing, are as likely to want to offer its services to a national, rather than local marketplace. How could such an entity involve itself in ‘access to justice’?

4 Existing Licensed Conveyancers owned by the large estate agents, or lenders, have no obligations to this argument. How are they to be dealt with? Are they likely to have an unfair commercial advantage over new entrants?

5 How would any ongoing obligations to ‘access to justice’ be monitored or enforced? Would the costs of the regulators be disproportionate?

6 Is it right in any event that a lack of public investment in access to justice should be subsidised by other [more profitable] areas of the law? Is it right that a consumer of, say, conveyancing services should have to pay a higher price than otherwise would be the case? If it is deemed to be acceptable, then should the large City firms be ‘taxed’ so as to make a contribution as well?

It is my submission therefore that to place any obligation on any new entrant to the legal services market which is discriminatory in favour of any one type of owner would be intrinsically wrong. I’m not sure how one can seek to protect a particular type of law firm [ie one that wants to provide a more general practice] in a free market economy, without subsidy, if it is seen to be necessary to support access to justice.

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