

LEGAL SERVICES BOARD

Alternative Business Structures: Approaches to Licensing

Representations made by:

Motor Accident Solicitors Society (MASS)
in response to the LSB's consultation document.

18 February 2010

1. What is your view of basing the regulation of ABS on outcomes?

a. Should all LAs have the same core outcomes?

Yes.

b. Are the proposed outcomes appropriate?

Yes.

c. Is the division between entity and individual regulation appropriate?

Yes, there has to be a balance between the two.

2. Do you think our approach set out to the tests for external ownership is appropriate?

Yes, except that there is a fundamental problem with regard to the proposal that there be no limit on external ownership i.e. ABS can be 100% externally owned. It is our view that there should be at least 51% shareholder majority in terms of qualifying professionals in a Solicitors practice i.e. Solicitors. Further that the majority of Directors of an ABS should be Solicitors. As a result, control of an ABS will remain with the profession. This will boost consumer confidence and achieve the desired outcome.

a. Should the tests be consistent across all LAs?

Yes.

b. Is our suggested approach to the fitness to own test the right one?

Yes.

c. If declarations about criminal convictions are required, should these include spent convictions?

Yes, should include spent convictions.

- d. What is your view of our suggested approach for considering associates? Is there an alternative approach that would work better in practice?

The suggested approach is pragmatic without being over burdensome. It is important that the LA has the capability to react rapidly if information suggests the possibility of undue influence.

- e. Should there always be a requirement to declare the ultimate beneficial owner of an ABS?

Yes.

- f. Overall, are any modifications needed to ensure that our approach work in a listed company?

No.

- g. Overall, are any modifications needed to ensure that our approach work in very small companies?

No.

- h. Do you think that the definition of restricted interest should change?

No.

- i. Do you think that covenants should be required from those identified as having a significant influence over an ABS?

Yes.

- j. How should the LSB respond to the information it receives about information on action taken against people that falls short of disqualification?

The imposition of conditions attached to the license.

3. Do you have views on how indemnity and compensation may work for ABS?

- a. How should an appropriate level of PII be set for ABS that are carrying out a variety of different activities, not all of which are currently regulated by the ARs?

There needs to be a mechanism whereby the levels of different activity are risk assessed across a number of broad categories and an appropriate level of PII be sent for ABS which fall within those categories.

- b. Should there be minimum PII levels, which are the same for all LAs for different types of activity?

Yes.

- c. Are Master policy arrangements appropriate for ABS?

No, because it is highly unlikely that a Master policy would be available for ABS who conduct such a wide range of different activities, each bringing a different risk into play.

- d. What would be appropriate arrangements for runoff and successor practices to enable sufficient commercial freedom for ABS as well as protection for consumers after practice closure?

Could not arrangements be made for closing practices to be offered run-off insurance cover with Master policy underwritten (see para 132).

- e. What should the requirements be for compensation funds in ABS?

That there be a single compensation fund which is funded from the ABS license fee.

- f. How could a compensation fund work in an ABS environment, in particular when the services offered by the ABS may be much wider than legal advice and where an AR may not currently have a compensation fund?

The contribution to the fund would depend upon the nature of the services offered, and there be a sliding scale depending on the nature of the ABS activity/services offered.

4. Do you agree with our position on reserved and non-reserved legal activities?

- a. Do you agree that ABS should be treated in a consistent way to non-ABS?

Yes, most definitely.

- b. Should all legal activities undertaken by an ABS be regulated or just reserved legal services?

All legal activities undertaken by an ABS should be regulated.

- c. What role do you see consumer education playing?

If (b) above is adopted, then consumer education would have little relevance. If not adopted, consumer education would be critical.

- d. How should ABS which are part of a wider group of companies be treated?

As a separate entity, so far as the ABS is concerned.

5. Are the enforcement powers for LAs suitable?

- a. What is your view on the proposed maximum level of financial penalty that a LA can impose on an ABS?

Agree.

- b. If you do not consider the proposed maximum to be appropriate what amount or formula would you propose?

N/A

- c. Will LAs have sufficient enforcement powers?

Yes

- d. Will ABS have sufficient clarity as to how the enforcement powers may be used?

Yes. It is critical that ABS understand the enforcement powers and how they may be used, so that the ABS fully appreciates the incentive to comply.

- e. In what circumstances should a LA be able to modify the terms of a license?

The circumstances in which a license may be modified should be clearly indicated in a list to be used as a single enforcement tool.

- f. Are there appropriate enforcement options for use against non-lawyer owners?

Non-lawyer owners should be treated no differently from lawyer-owners, so that all enforcement tools provided by the LSA 2007 should apply.

6. What do you think of our approach to access to justice?

- a. Do you think the wide definition to access to justice that we have taken is appropriate?

Yes.

- b. Is asking an ABS on application how they anticipate that they will improve access to justice a suitable approach?

Yes, very much so.

- c. Do you agree that restrictions on specific types of commercial activity should not be put in place unless there is clear strong evidence of that commercial practice causing significant harm?

Yes.

- d. Do you agree that LAs should consider how ABS in general impact access to justice rather than trying to estimate the impact of each application singularly?

No. LAs should consider each applications singularly.

- e. Do you agree that LAs should monitor access to justice?

Yes.

7. What is your view of our preference for a single appeals body?

- a. Should, in the future, a single body hear all legal services appeals?

Yes, a single body to hear all legal service appeals.

- b. If you don't think there should be a single body, who should hear appeals from LSB decisions should it become a LA?

N/A

- c. Is the FTT, GRC an appropriate body to hear appeals?

No.

- d. What other options for the location of the body?

Clarity of function and expertise are critical factors when deciding on an appeals body.

8. Do you agree with our approach to special bodies?

- a. Do you think that special bodies' transitional arrangements should come to an end?

Yes.

- b. Do you think 12 months after the start of mainstream ABS is sufficient time for them to gain a full license?

Yes.

- c. Do you think LAs should adapt their regulation for each special body?

Yes.

- d. Do you agree there are some core requirements that all special bodies should meet? If so, what do you think these are?

Yes – expertise, access to justice, make up of the controlling committee/board, governance, insurance and redress.

- e. What are your views on the suggestion that the OLC should make voluntary arrangements with special bodies?

A good idea.

9. Do you think that our approach to HoLP and HoFA is suitable?

- a. Do you think that our approach on focussing on compliance systems across the organisation is suitable?

Yes.

- b. Do you think that HoLP and HoFA should undergo a fit and proper test?

Yes.

- c. Should there be training requirements for the HoLP and HoFA?

Yes, but it needs to be proportionate.

- d. Do you agree that the HoLP and HoFA could be the same individual (especially in small ABS)?

Yes.

10. Do you think that our approach to complaints handling is suitable?

- a. Do you think that ABS complaints should be handled in the same way as non-ABS complaints?

Yes.

- b. Do you think that ABS should be allowed to adapt their complaints handling systems if they already have one for their non-legal services consumers?

No.

- c. Do you think it is appropriate for the OLC take complaints from multi disciplinary practice consumers and refer where necessary?

Yes, otherwise consumers will be confused.

11. What are your views on our proposed course of action to conduct research and, depending on the results, either compel transparency of data or encourage it?

- a. Do you agree with our position on diversity and ABS?

Yes.

- b. Do you agree that the overall impact is unlikely to be adverse to the diversity of the profession?

Yes.

- c. Do you agree that non-lawyer managers may open new career paths to lawyers and these may have a positive impact on career progression?

Yes.

- d. Do you agree that the demand for diverse legal professionals will, largely, offset the potential impact due to the closure of small firms?

No

- e. Should the LSB require information about the diversity of the workforce in ABS? If so when and should this be a requirement for other legal service providers?

Yes, at the application stage. Yes, it should be a requirement for other legal service providers.

12. Do you agree with our approach to international issues?

Yes.

13. Should LDPs, Recognised Bodies and other similar firms have transitional arrangements into the wider ABS framework in the way we propose?

- a. Is 12 months after the start of mainstream ABS sufficient time to allow this to happen?

Yes.

14. Should ABS licenses be issued for indefinite periods?

Yes.

- a. Should the annual charging process be broadly cost reflective or a fixed fee?

Broadly cost reflective.

- b. How should LAs ensure ABS are continuing to comply with their license requirements?

There has to be a system whereby compliance with license conditions/fitness to own, are checked on an ad hoc basis. Unfortunately, there cannot be total reliance on notification to an LA by an ABS of any changes. Annual checks are too burdensome, but there has to be some checking process, similar to the current SRA "Monitoring Visit" to act against a deterrent against failure to report changes. The consumer needs to be reassured and protected.

15. Do you agree with our approach to managing regulatory overlaps?

Yes.

- a. Is it desirable to have a framework approach to a MoU?

Yes.

- b. Do you think we have identified the right bodies to develop a MoU with?

Yes.

- c. Do you think we have identified the right issues to include?

Yes.