

**Minutes of the third meeting of the
Alternative Business Structures (ABS) Implementation Group**

Held on Tuesday 29th September 2009 from 12:00 to 14:10

Legal Services Board, Victoria House, Southampton Row, London, WC1B 4AD

Attendees

Chris Baas	Legal Services Board	(“LSB”)
Simon Blandy	Council for Licensed Conveyancers	(“CLC”)
Alison Crawley	Solicitors Regulation Authority	(“SRA”)
Elizabeth Gibby	Ministry of Justice	(“MoJ”)
Fran Gillon	Legal Services Board	
James Hutchinson	Legal Services Board	
Chris Kenny	Legal Services Board	(“Chair”)
Mandie Lavin	Bar Standards Board	(“BSB”)
Vivienne Muir	Institute of Chartered Accountants of Scotland	(“ICAS”)

Apologies

Peter Beesley	Master of the Faculties
Dianne Hayter	Chair of Legal Services Consumer Panel
Mike Knight:	Intellectual Property Regulation Board
Ian Watson:	Institute of Legal Executives

Regulatory representatives of the Association of Chartered Certified Accountants (“ACCA”), Association of Law Costs Draftsmen and Master of the Faculties were unable to attend.

Background

This was the third meeting of the ABS Implementation Group. The Chair noted that a representative from the ACCA had not yet been identified to attend the meetings. The Chair welcomed Vivienne Muir from ICAS to the group.

Agenda

- A. Consideration of minutes from previous meeting and matters arising
- B. Update on progress towards ABS implementation

- C. Update and discussion on the ABS strategy paper that went to the Legal Services Board (28/09/09)
- D. Confidential discussion of paper on 'Memoranda of Understanding' (09-09-01)
- E. Confidential discussion of paper on Access to Justice (09-09-02)
- F. Confidential discussion of paper on Ownership and Management
- G. Any Other Business

A. Consideration of minutes from previous meeting and matters arising from those minutes

The minutes from the previous meeting were considered and approved without further amendment.

B. Update on progress towards ABS implementation

1. The SRA have been reading consultation responses and preparing a feedback report which will go to the SRA Board on 15 October 2009. Consultation responses provided broad agreement on the non-contentious ABS issues but there were no huge advances on contentious issues. The SRA have appointed Field Fisher Waterhouse to assist with rule drafting in preparation for ABS.
2. The CLC reported that they have been doing lots of thinking but no specific activity to report at this stage.
3. The BSB has issued a consultation paper on the structure of self employed practice (published on 17 August). The consultation deadline of 25 September 2009 has now been extended to 9 October 2009 to encourage further engagement from the profession. The Chair referred to Desmond Browne's letter encouraging individual barristers to engage in the debate and discussing the potential benefits of 'corporate procurement vehicles'. The BSB have commissioned Europe Economics to complete a piece of research focusing on the effects on the market and outcomes of potentially allowing barristers to practise as managers of LDPs and other new business vehicles. The final report is due on 2 October 2009. The BSB Board meeting will take place at the end of October. A number of issues are tabled for discussion including a decision on allowing barristers to join LDPs. A joint working group has also been established to consider entity regulation, chaired by Patricia Robertson QC. Paula Diggle has recently joined the group as a lay member and a consultation document on how regulation of entities might work is being developed.

Action Point 1: Mandie Lavin to circulate the letter from Desmond Browne.

4. ICAS reported on recent progress in Scotland. The Scottish Parliament will soon be issuing the Legal Services Bill framework for ABS. ICAS are very interested in the developments and have started discussions with the Law Society. They are currently in the information gathering stage, looking at England and Wales to learn lessons on ABS and other issues which may arise in Scotland. The LSB noted that ICAS and ACCA still had to effect a representative/regulatory split but that such a requirement would need to be proportionate and tempered.
5. MoJ reported that everything is still on track for mid 2011 and they have tried to plan for potential delays due to the forthcoming General Election.

C. Update and discussion on the ABS strategy paper that went to the Legal Services Board

6. The LSB informed the group that a detailed ABS strategy paper had gone to the Legal Services Board on 28 September. The Board were happy with the progress made and supportive of the proposals. A final draft of the ABS discussion paper will go to the Board on 28 October 2009 for agreement and confirmation of the publication date.
7. The LSB updated the group on the key aspects of the Board discussion on the ABS strategy paper. The Board was in agreement with the proposed framework approach, with LSB principles providing consistency across all Licensing Authorities and sector or ABS specific rules if needed. The Board challenged on the idea of 'principles based regulation', suggesting the LSB may adopt rules where appropriate, or principles where appropriate, but the key focus should be on outcomes. The Board was comfortable with the idea that there will be a period of transition, with two different regulatory approaches for ABS and non-ABS, as outcome based regulation for ABS provides a way to move the debate along.
8. The SRA queried whether the Board had received information on the number of new entrants, as they were concerned about the potential impact on existing regulatory practices as well as the compliance burden. The Chair commented that nobody had these statistics as we cannot accurately predict how the market will respond. The Chair noted that in reality, whether rules or principles were adopted, the end point may not be too different but the LSB would like to test the existing rules for relevance against the desired outcomes.
9. The LSB informed the group that a piece of work 'stress testing' likely ABS models is planned. The SRA and CLC expressed a desire to be involved with this work.

Action point 2: SRA and CLC to work with LSB on 'stress testing' work.

10. The CLC queried whether the LDP interviews had informed our thinking significantly. The LSB confirmed that they have completed a number of interviews and more were planned. They have been useful, although we are not using the interviews to test principles.
11. The LSB invited the group to provide continued advice and suggestions over the next phase of the project.

D. Confidential discussion of paper on 'Memoranda of Understanding'

12. The LSB provided an overview of the paper, stating its preference for frameworks between regulators and consistency of engagement between ARs, rather than detailed MoUs which try to govern all possible ABS models.
13. The SRA felt this was a sensible approach but queries what it would actually look like, particularly regarding the issues with the London Stock Exchange and the conflict with FSA rules. It was noted that these issues are being highlighted with both organisations.
14. The LSB committed to scheduling meetings with regulators to discuss broad approach and develop relationships at the same time.

Action point 3: LSB to send letters to participants in advance of facilitating meetings after publication of the ABS consultation.

Action point 4: Kevin Rousell (Claims Management Regulation) to be included on list of people we talk to.

15. The BSB informed the group that any Memorandum of Understanding would have to go through both the BSB and Bar Council. This was noted by the Chair.
16. The SRA suggested that it would be useful to look at the most likely ABS models in detail and further said that it would not want the framework approach to preclude modelling around known ABS models. ICAS commented that this was the kind of activity they were undertaking in Scotland. The LSB confirmed that they would be happy for this type of discussion to go ahead and that this may form part of the work on 'stress testing' certain models.
17. MoJ noted the need for clarity between regulators and both the importance of reaching agreement on potential overlap and importance of lead responsibility. The Chair agreed, noting the difficulty of identifying who is responsible for regulating the entities and which regulators are responsible for regulating individuals.
18. The SRA noted the additional complications for the Institute of Chartered Accountants of England and Wales, as the rules on independence do not apply.

The LSB agreed there is a need to find a proportionate way around these issues with regards to ACCA and ICAS.

19. The SRA commented on the need to be aware of the Framework Services Directive (2006/123/EC) and the importance of a pragmatic approach. All agreed there was a need for a shared understanding and it would be useful for a representative from the Department for Business Innovation and Skills (BIS) to attend a future meeting of this group.

Action point 5: SRA and BSB to provide LSB with contacts at BIS.

Action point 6: LSB to invite a contact from BIS to discuss the Framework Services Directive at a future meeting.

E. Confidential discussion of paper on Access to Justice

20. The LSB informed the group that the paper was based on our early thinking and only presented ideas at this stage.
21. The BSB expressed concerns that the paper was solicitor centric and there was a need to consider the issues around access to justice and the future of the Bar. The BSB said it was focused on opening up public access and queried how far there would be market surveillance. The competition paper by Peter Roth QC (available on the BSB website) was noted.
22. The SRA agreed with what the paper sets out as not 'do-able' and welcomed this as a balance to some of the extreme views (e.g. the recent Law Society comment that Tesco, or other large ABS entrants, should pay subsidies to small high street firms to support access to justice.) However, the SRA questioned what is 'do-able' in practical terms.
23. The MoJ questioned the drafting of the assertion that ABS do not present a unique risk to access to justice. There is a need to be mindful of perception of ABS and the perceived associated risks around the tensions between commercial and professional interests.
24. It was noted that the impact of ABS on face to face provision and geographical spread is still very much an issue for discussion.
25. The Chair commented that there is a need to look at the distinction between access to justice and access to legal services. The LSB will then be in a better position to consider the subtleties of the risks involved.
26. The issue of referral fees was briefly discussed. The BSB felt that issues of transparency need to be addressed. The LSB commented that consumer education and information is a strand of ABS which needs to be picked up in the future, potentially through deliberative research to establish what consumers need to know about the new ABS regime.

27. Issues around web-based provision were also touched upon – for example whether websites give mainly information or advice, and the associated jurisdictional issues. The group agreed that this was wider than ABS.

28. The LSB commented on the need to establish a baseline for the market, in order to consider the impact on access to justice. The MoJ noted that they have commissioned a piece of work and that Mark Cope is the relevant contact.

Action point 7: LSB to re-draft the paper on Access to Justice, incorporating the feedback received, and circulate to the group.

F. Confidential discussion of paper on Ownership and Management

29. The LSB took the group through the Ownership and Management issues, providing detail on our proposed approach. Feedback was sought on whether the suggested way forward may be completely unworkable.

30. In implementing schedule 13, the LSB is currently favouring an ‘FSA lite’ model where it would use the FSA process to map official ownership. There is also scope to passport people under the FSA regime (the majority of FTSE 100 companies are authorised). The LSB is proposing to draft a detailed Regulatory Impact Assessment and potential proposals for amending schedule 13.

31. The Chair commented that the policy case is strong but that the LSB need to consider how to manage the perception of another statutory instrument, and potential accusations of “watering down” ownership requirements.

32. The group were broadly in agreement that this is a sensible approach but the future of the FSA and financial services regulation posed some challenges.

33. MoJ expressed some concern about the potential for future changes to the Financial Services and Markets Act 2000 and the impact this would have on our approach. There is a need to do further checks on any planned directives and consider presentational and handling issues.

Action Point 8: LSB to check for planned changes and prepare a matrix mapping the provisions from the Financial Services and Markets Act 2000 and the relevant changes against the equivalent provisions of the LSA 2007.

34. The LSB proposed the introduction of management competency tests at entity level (based on the New South Wales (“NSW”) self assessment model which has received positive reviews).

35. The MoJ agreed that testing management competency is the way forward but that the competence within the Licensing Authority to understand the systems needs to be high.
36. The SRA expressed some concern about the emphasis on client care in NSW. It was also noted that this assessment can only be made once an ABS is up and running and there is a need to consider how we measure the management competency of new entrants. The LSB noted that this test could be delayed until after authorisation.
37. Overall there was general support for an England and Wales version of the management competency test but it was recognised that there was a need to flesh out what relaxation and 'FSA-lite' approach means.
38. There was discussion around timescales and the need to accelerate any proposed statutory instrument. The MoJ noted how tight timescales would be if the LSB intend to put proposals to existing ministers. The SRA suggested the need for a plan B to amending schedule 13 and the importance of getting it right.
39. The LSB then summarised the position on HoLP and HoFA for the group: One person can fulfil both roles, there must be a clear line of communication to the Board, and the LSB does not wish to be overly prescriptive on the practical arrangements.
40. The BSB expressed some concern about this approach as the HoLP and HoFA are supposed to carry much responsibility. The need for clear statements about safeguards and consumer protection was emphasised (with a comparison to the pharmaceutical sector experience).
41. The MoJ suggested that the LSB look to the financial services industry and learn from its experience (for example the Head of Compliance role).
42. The LSB suggested that much of this was an issue of drafting but that the HoLP/HoFA section could be made more robust and the messages would be looked at as the discussion paper evolves.

G. Any other business

No items were considered under AOB.

There being no further business, the meeting came to a close.