

**Minutes of the second meeting of the “Alternative Business Structures (ABS) Implementation Group” held on Thursday, 28<sup>h</sup> August 2009 from 14:00 to 15:10 at the Legal Services Board, Victoria House, Southampton Row, London, WC1B 4AD**

**Attendees**

Chris Baas:	<b>Legal Services Board</b>	<b>(“LSB”)</b>
Simon Blandy:	<b>Council for Licensed Conveyancers</b>	<b>(“CLC”)</b>
Simon Garrod:	<b>Bar Standards Board</b>	<b>(“BSB”)</b>
Elizabeth Gibby:	<b>Ministry of Justice</b>	<b>(“MoJ”)</b>
Fran Gillon:	<b>Legal Services Board</b>	
James Hutchinson:	<b>Legal Services Board</b>	
Chris Kenny:	<b>Legal Services Board</b>	<b>(“Chair”)</b>
Mike Knight:	<b>Intellectual Property Regulation Board</b>	<b>(“IPREG”)</b>
Bruce Macmillan	<b>Legal Services Board</b>	
Ian Watson:	<b>ILEX Professional Standards Limited</b>	

***By telephone***

Alison Crawley:	<b>Solicitors’ Regulation Authority</b>	<b>(“SRA”)</b>
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*Regulatory representatives of the Association of Law Costs Draftsmen and Master of the Faculties were unable to attend.*

**Background**

This was the second meeting of the ABS Implementation Group. The Chair noted that in future Institute of Chartered Accountants of Scotland the Association of Chartered Certified Accountants would be invited to the group as Approved Regulators in respect of certain persons performing probate activities. The Chair also noted that Peter Bucks would be joining the group as an independent advisor to the LSB with a financial and regulatory background.

**Agenda**

- A.** Consideration of minutes from previous meeting and matters arising from those minutes
- B.** Update on ABS discussion paper and first analysis of trends and themes
- C.** Special Bodies – update
- D.** Appellate Bodies – update
- E.** Developing Memoranda of Understanding (MoUs) with other regulators
  - Who do you need to work with?
  - Have you started dialogue?
  - Can you share the required information?
  - What changes (legislative or otherwise) do you need to ensure that you can share the required information?

**F. Legal Disciplinary Partnerships – update**

**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 amendment.

**B. Update on ABS discussion paper and first analysis of trends and themes**

1. The LSB noted that 40 responses had been received to the ABS discussion paper published on 14 May 2009. A further response was expected in early September from the Council of Bars and Law Societies of Europe. 38 responses have been published on the LSB website<sup>1</sup>, with a further two confidential responses being received from the Institute of Trade Mark Attorneys and Keoghs LLP. Furthermore, the Institute of Paralegals, the Legal Complaints Service and the City of London Law Society provided partially confidential responses.
2. The LSB confirmed that it had read all of the responses and was still in the process of considering them. Initial impressions, however, revealed a wide variety of respondents ranging from regulatory bodies and representative bodies (e.g. the SRA, the Bar Association for Commerce Finance and Industry and the Office of Immigration Services), law firms (e.g. Taylor Wessing LLP and Addleshaw Goddard LLP), consumer groups (e.g. Which?), a think tank (the Legal Services Policy Institute), and an individual (Garry Ford). The responses were generally constructive, and there were few novel issues raised that had not already been considered by the Board. It was particularly noted that on timing, the responses generally endorsed the LSB's target, but made note that if it were to become unachievable, a clear message should be sent to the market.
3. The MoJ queried whether a summary of the responses would be published. The LSB said that it was not currently intended to publish a summary of responses given that all the responses were available on the website.

**C. Special Bodies - Update**

4. The LSB informed the group that an early policy piece had been considered by the LSB leadership team, but had not yet been shared with the Board. The paper had outlined the research into special bodies that had taken place and had looked at the arguments for and against entity regulation.
5. The LSB noted that the initial view was that that it could not be taken for certain that the absence of a profit motive will help mitigate risk for consumers. The early thinking was therefore that special bodies would be brought within the regulatory

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<sup>1</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/submissions\\_ab\\_structure.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_ab_structure.htm)

regime albeit with regulation that was proportionate to the risk they posed. The view was that this should be done in parallel with the development of ABS but did not form part of the critical path. LSB would therefore work towards developing a regulatory framework that would be able to be implemented by licensing authorities that would start months and not years after the go-live date for ABSs.

6. The LSB offered to circulate a shortened version of the paper to the group's members. There was a brief discussion about the risks that special bodies faced and how there may be some similarities with the position of local authority lawyers.

**Action point:**

**The LSB agreed to circulate a shortened version of the discussion paper to the group's members.**

**D. Appellate Bodies – Update**

7. The LSB noted that it was beginning to identify an appropriate appellate body to hear appeals on licensing conditions and financial penalties. The LSB suggested that the Solicitors Disciplinary Tribunal had a slightly different role and focussed on disciplinary matters only.
8. The LSB noted that it intended to speak with the MoJ next week to consider the possibility of the use of the new General Regulatory Chamber. The LSB also mentioned the Competition Appeals Tribunal and the Competition Commission, although it was noted that appeals to the Competition Commission were usually required explicitly by legislation.
9. The LSB noted its initial attraction to the creation or development of a single appellate body to ensure that a common body of interpretation. The LSB also discussed the possibility of a single chamber devolving some decisions to individual regulators' own processes.
10. The CLC noted that their tribunal did not focus only on disciplinary matters and had had experience of financial penalties for non-compliance to entity based requirements.
11. The SRA suggested that the LSB engage with the High Court in addition to the other bodies mentioned.

**E. Developing Memoranda of Understanding (MoUs) with other regulators**

12. The LSB noted that the Approved Regulators would need to develop memoranda of understanding with one another and with other regulators and relevant bodies.
13. The CLC noted that there was a difficulty in finding a representative group that spoke authoritatively to a sector. It was recommended to approach the 'highest level' body first (e.g. the Financial Reporting Council) and then contact those

bodies under that umbrella body, as and when necessary (e.g. the Institute of Chartered Accountants of England and Wales or the Association of Certified Chartered Accountants).

14. The CLC also observed that the Royal Institution of Chartered Surveyors and the Property Codes Compliance Board would be useful organisations to dialogue with in the property field. The LSB noted that it would be worthwhile to engage with HM Land Registry as well.
15. The SRA noted that the Financial Services Authority, the Office of Fair Trading and Office of the Immigration Services Commissioner were also vital regulators to liaise with.
16. The LSB also noted that it may be desirable to share information for general regulatory purposes. The SRA noted that it was very easy to share information 'vertically' (i.e. with the LSB and Office for Legal Complaints) but not so easy to share the information 'horizontally' (i.e. amongst the Approved Regulators) and that currently the regulators had to apply on common law 'public interest' gateway to share information in such a fashion. The SRA also noted that previously it had argued for a 'statutory gateway' (based on the Serious Organised Crime legislation) to be introduced by the MoJ into the Solicitors Act 1974.

#### **Action points:**

- **The SRA agreed to send a paper to the LSB that they had previously produced for the MoJ which proposed to develop a 'statutory gateway' to share information.**
- **The LSB agreed to create an agenda and briefing pack on these issues, and to organize a roundtable with the Approved Regulators and the relevant bodies with whom memoranda of understanding would be needed.**
- **The MoJ agreed to share information and 'lessons learned' on how they have created memoranda of understanding in the past.**

#### **F. Legal Disciplinary Partnerships – update**

17. The LSB said that it was about to launch a small project to talk directly with Legal Disciplinary Practices ("**LDPs**") to understand what issues had been raised and how successful this new type of ownership was proving to be. The LSB asked for recommendations as to who it would be worthwhile speaking to.
18. The SRA said that they saw the value in gaining as much information as possible but did not see LDPs as having radically changing the legal market. The SRA reported that there were approximately 90 LDPs, with a roughly even number of firms who had taken on non-lawyer managers and non-solicitor lawyer managers. It was the SRA's view that most of the new managers had been promoted from within their firms and there was evidence of few "lateral hires". The CLC said that

this represented no change really for them as it was “business as usual” the only change was that their members were allowed into solicitor’s firms.

19. The SRA said that in their experience to date the best learning had come from rejecting applications for LDPs. They noted one in particular where a newly qualified solicitor, who had not completed their supervised period, had applied to form a LDP with a sole practitioner who was not proposing to provide any oversight of her work. The SRA commented that this challenged their thinking on these issues.
20. The LSB noted that they would be meeting both the SRA and the CLC to discuss these issues in more depth in the next few weeks.

#### **G. Any other business**

21. The SRA asked for feedback on their analysis of the ‘Fitness to Own’ and ‘Head of Legal Practice/Head of Finance and Administration’ conditions in the Licensing Rules which they have supplied to the LSB. The LSB said that it would give that feedback before the end of September and would incorporate the comments received from the ABS discussion paper.
22. The LSB invited the Approved Regulators to discuss the LSB’s consultation on “shaping a statement of policy on compliance and enforcement powers” before that consultation closes on 26 October 2009; the LSB said that if any Approved Regulator wished to have one or more meetings with the LSB on that topic, they were more than welcome.

#### **Action points:**

- **The LSB will confirm dates for the next ABS Implementation Group meetings.**
- **The LSB will let the SRA know about the current direction of travel on the ‘Fitness to Own’ and ‘Head of Legal Practice/Head of Finance and Administration’ conditions in the Licensing Rules before 24 September 2009 and will circulate preliminary papers on those topics.**

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