

Alternative Business Structures: Fact Sheet 5

ABS AND LEGAL AID

Does introduction of Alternative Business Structures impact upon legal aid?

Possibly; Alternative Business Structures (ABS) will remove unnecessary restrictions on the forms that legal service providers can take while ensuring that appropriate protections are in place. So, ABS firms will be able to adopt much more flexible management and ownership structures than traditional law firms although they will still be delivering legal services that are regulated. The aim is more innovation and better outcomes for consumers. Purchasers of legal services (in the case of legal aid, the Government and Legal Services Commission) will decide whether or not to purchase services from any particular ABS, but purchasers will, of course, need to treat all types of provider fairly.

So will ABS be able to deliver legal aid services?

From a regulatory perspective, we cannot see any reason why they should not. There are already a wide range of providers delivering legal aid services including not for profit agencies and commercial businesses that do not look like traditional law firms. Who delivers legal aid services in the future depends upon the choices that the Government makes, but ABS will be well placed to respond to the commercial and consumer factors covered in legal aid contracts.

Doesn't ABS only work for commoditisable services?

ABS changes are focused on ownership and management rather than what services are delivered. Services that can be commoditised (e.g. through contact centres and more use of IT) are often attractive to investors that are looking at ways to improve quality of service at lower prices. But ABS changes also allow for partnerships between different professionals within and outside the legal professions. And there are already many charities offering unregulated legal aid services, so ABS gives scope to deliver many other services in many other ways. Of course, there is nothing to stop traditional law firms from changing what and how they deliver services.

Won't high priority work such as criminal legal aid be exempted from ABS reforms?

No. Effective regulation should provide the purchasers and users of legal aid services the confidence to focus on choosing those providers with the skills and knowledge that are needed for the work rather than their business structure. The Act sets out a number of specific ABS safeguards – control of ownership, clear corporate responsibilities for professional compliance and for finance and administration control. Combined with effective regulatory policing of firms and ethical requirements on individuals, these will support professionals in meeting consumers' needs regardless of how the firms they work in are managed and owned.

Will there be any restrictions on the legal aid work that ABS can undertake?

We see no reason for the regulators to restrict the type of work that could be undertaken. The introduction of ABS should lead to a larger variety of business forms which will lead to a more competitive market more generally. However, it will be for the Government rather than the LSB to decide how legal aid can best take advantage of this changing market.

So what impact might there be from ABS on legal aid?

The removal of restrictions on who can own or manage law firms is likely to lead to an increasingly dynamic legal services market, with firms potentially owned or run by a wider range of businesses such as banks, insurance companies, other professional service providers, not for profit agencies, supermarkets, other businesses or investors. This increased level of competition is likely to lead to new ways of delivering services – for instance:

- Linking up with other services people need alongside legal services (education lawyers working alongside educational psychologists; family lawyers working in partnership with family therapists or mediators; or, an agency working with offenders offering social welfare law advice).
- Using information technology to make more services available remotely and on line.
- One stop shops that bring legal and other advisory services for particular client groups together such as those dealing with long term or youth unemployment offering a range of health, education, training, support and advice services.
- Well known brands in other areas delivering legal services based upon the knowledge people already have about them – this may tap into unmet legal demand.
- New investment in legal services that brings economies of scale through IT and other efficiencies

It is, of course, unwise to try and predict the future and the LSB does not have a single blueprint for how services should be delivered – only that regulation should protect consumers from unnecessary and unreasonable risks, not dictate business models.

So will more legal aid services be delivered using IT?

This is a matter for the Government and Legal Services Commission rather than regulators. IT is already being used more and more to reach consumers, with high quality advice at lower cost in several different parts of the legal services market. Improvements in technology and the increased flexibility in allowing outside capital suggests to us that the use of IT will increase in the market overall. Ultimately, consumers will decide if they are satisfied with services delivered in different ways.

What about legal aid consumers? Will they be protected properly if banks or supermarkets are delivering their legal aid services?

Some users of legal aid services are amongst the most vulnerable consumers of legal services. But the changes to regulation of legal services brought about by the Act are designed to put their needs – and those of all consumers - at the heart of regulation. Overall, the level of consumer protection will be enhanced as we move forward and no lower for ABS consumers than for users of more traditional legal service providers.

Will legal aid contracts be skewed towards ABS providers?

Legal aid purchasers will want to work with whichever properly regulated legal service providers are best able to deliver its objectives regardless of their ownership or management structures. Just as the Government is unlikely to skew legal aid contracts towards ABS; it is unlikely to skew them against them, not least because EU procurement regimes prevent discrimination for or against different classes of operator

Won't ABS push out all the small providers of legal aid?

The provision of legal aid is only part of the legal services market, albeit an important one. The introduction of ABS will only increase the options available to legal service providers of all sizes in terms of their form and structure. All firms, small as well as large, will need to focus on what makes them attractive to consumers rather than rely upon how things used to be done; something many legal aid firms have been facing up to for several years.

The diversity of legal aid firms is a real plus point for legal aid – won't that be damaged by ABS?

The diversity of the legal aid provider base sets a standard that the whole legal services profession can aspire to. But there is little research on why so many BME led law firms work in legal aid and speculation ranges from personal commitment to clients through to lack of opportunities elsewhere in the legal services market. Relaxation of restrictions on management and ownership may encourage greater diversity across all sorts of legal services firms by bringing new people and ideas into the legal services sector. It would certainly be undesirable, and potentially unlawful, to maintain restrictions ostensibly to protect any group covered by anti-discrimination legislation from competition if the effect was to discriminate against another group. A more dynamic market may provide opportunities for diverse firms to grow and increase the diversity across the legal profession; it is the responsibility of regulators to promote such diversity positively, rather than through controls which distort the market.

Isn't this just camouflage for more legal aid cuts?

The amount of money spent on legal aid is a political decision for Government rather than an issue for regulators. It is affected by the scope of services (i.e. what is covered by legal aid) and the eligibility (i.e. who is entitled to legal aid). It is also affected by supply side factors such as accessibility and availability of services (i.e. queuing or rationing) and the cost of purchasing those services. The cost of services is affected by the design of services and, of course, by competition. Markets work to drive up innovation and quality through competitive pressures – i.e. consumers and purchasers making clear what they want at a given price and choosing between firms offering to meet their needs. If the Government is able to use the increased competition that comes from ABS to improve services, drive down costs and/or increase access, then that is in the public interest.

What will it mean for i) solicitors and ii) barristers who currently rely on legal aid funding?

Lawyers in all sorts of business are already facing challenging conditions. It is likely that this will continue and those that innovate in terms of what they deliver or how they deliver it are likely to do well – just as they have in the past. Recent changes agreed by the Bar Standards Board (BSB) will mean that barristers will be better placed to take advantage of legal aid contracts by bidding to deliver front line legal services, either on their own or in new entities with other barristers or solicitors. Similarly, solicitors are already changing to adapt to new market pressures both within legal aid and beyond. Those that innovate to drive up quality and access, reduce prices and improve customer service are likely to prosper. Those that cling to the past may find life tougher. A strong legal profession is one that can withstand competitive pressures, meet the changing needs of their consumers and innovate to compete.