

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

**Held on Thursday 7 October 2010 from 13:00 to 14:00**

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

**Attendees**

Chris Kenny	Legal Services Board (LSB) (Chair Person)
Michael Stacey	Legal Services Board (LSB)
Luke McInerney	Legal services Board (LSB)
Fran Gillon	Legal services Board (LSB)
Chris Baas	Legal services Board (LSB)
Alanna Linn	Legal Services Consumer Panel
Ann Morgan	Solicitors Regulation Authority (SRA)
Ann Wright	Intellectual Property Regulation Board (IPREG)
Imelda Moffat	Institute of Chartered Accountant England and Wales (ICAEW)
Victoria Swan	Council for Licensed Conveyancers (CLC)
Geraint Davies	Bar Standards Board (BSB)
Gemma Burnett	ILEX Professional Standards (IPS)
Charlotte Barbour	Institute of Chartered Accountants of Scotland (ICAS) (phone)
Surinder Sawali	Ministry of Justice (MoJ)
Mary Dallas	Tribunal Service

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**Background**

This was the eleventh meeting of the ABS Implementation Group.

**Agenda**

1. Minutes
2. Matters arising
3. Update on progress towards ABS implementation
4. Mary Dallas (Tribunal Service) to discuss revised funding mechanism for appeals
5. Update on MDP meeting
6. Any Other Business

## **Minutes**

1. The minutes from the previous meeting were considered.
2. A small amendment was proposed in order to clarify that the BSB's paper in preparation for September is the Regulating Entities Consultation Paper.

## **Matters arising out of the minutes**

3. No matters arose. Minutes were approved.

## **Update on progress towards ABS implementation**

### *LSB*

4. A draft Section 69 order has been put to consultation and will conclude on 20 December. The s.69 consultation concerns the power the LSB has to make recommendations to the Lord Chancellor under s.69 of the LSA. Under that section the Lord Chancellor may by order modify, or make other provision relating to, the functions of an approved regulator.
5. This type of power enables primary legislation to be amended or repealed by secondary legislation with or without further parliamentary scrutiny.
6. The LSB is doing further work with the SRA on the issue of sole practitioners. The SRA are taking this part of the work forward.
7. Draft consultation on ABS appeal (s.80) is progressing and we now have the drafting order and consultation paper published for consultation with the closing date being 12 November.

### *CLC*

8. Currently undertaking consultation on Outcome Focused Regulation (OFR). In particular, litigation, the Licensed Body Framework and advocacy qualifications are the subject of discussion. Three road shows are planned – Cardiff, Leeds and Cambridge in October. These road show events have been arranged to discuss the consultation and to answer questions from practitioners.

### *IPREG.*

9. Key news to report is that some firms have expressed interest in joining the IPREG ABS Working Group and have written to the group in that regard.

### *IPS*

10. IPS have launched a consultation on Criminal Litigation Rights. The IPS is making an application under the LSA 2008 to become an approved regulator for the purposes of granting rights to conduct litigation in criminal proceedings to members. The application

also seeks to grant rights of audience to litigators. The consultation on the proposals closes on 22 October.

### *BSB*

11. Regulating Entities Consultation has been launched and is a detailed document that is potentially a huge shift for the Bar. The proposal relates to the BSB's approach to entity regulation and whether the BSB would be prepared to regulate ABSs. The consultation will allow the BSB to glean the various opinions from the Bar and to gauge the level of interest.

### *SRA*

12. The SRA has received 83 responses from a wide range of bodies, firms and representative groups (including potential ABSs) to the May Consultation Paper. SRA plans to publish their response and further consultation on 21 October.
13. Cost benefit analysis (CBA) and competition work on the Handbook is ongoing. No significant findings regarding competition. On CBA, the initial work will be published in November. The key issues in the CBA included the transition to OFR, roles of COLP and COFA (HOLP and HOFA for all firms) and information requirements of the SRA.
14. SRA have also undertaken a human rights audit of the Handbook. No significant issues have been identified. Equality impact work is also ongoing on the Handbook and will be published in October.
15. A Policy Statement on the SRA's April consultation paper regarding OFR will be published in November. This will cover authorisation, supervision and discipline of firms.
16. MDP work - the working party spent its last meeting focusing on the Framework MoU. Work is also ongoing on developing the SRA risk framework for assessing risk in firms. More information on this will be published in November.

### *MoJ*

1. The Cabinet's Reducing Regulation Committee (RRC), has given clearance to proceed with the work for ABS. However, we need to note that various regulatory aspects for ABS might, subject to their discretion, still be considered by the RRC.
2. MoJ noted that as we are implementing ABS all organisations must work together to achieve this given the risks involved and the ambitious nature of the changes.
3. The MoJ is assessing how best to manage all the legislative work required, which involves a number of negative and affirmative SIs to be made and all that work needs to be balanced with the constant pressures on the parliamentary timetable.

## *ICAEW*

4. ICAEW are actively informing their members about through taking an information raising approach. For example, ICAEW are talking about ASB at industry functions where members are starting to ask questions.
5. Preliminary results from a survey of small accountancy firms suggests that out of 2500 (ICAEW unsure if this was total firms or accountants) around 600 intended to become ABS.
6. ICAEW regarded the level of interest and preparation amongst accountants as akin to one year ago for legal service firms. Nonetheless, ICAEW's advocacy work is raising the interest across the profession and the momentum is steadily growing.

## *ICAS*

7. The main issue at the moment is the change of legislation regarding regulating legal services in the Scottish Parliament and what this means for ASBs' north of the border.

### **Mary Dallas (Tribunal Service) to discuss revised funding mechanism for appeals**

8. LSB needs to think about how ABS appeals will be dealt alongside disciplinary processes. The LSB's view is that the conduct of an individual working in an ABS should be dealt with by the relevant Licensing Authority. Disciplinary issues should be handled by the relevant professional body that the individual belongs to.
9. Suggestion that we could use a similar approach adopted by the MDP framework MOU in terms of investigations.
10. Revised costings from the Tribunal Service give costs of £75k annual running costs for 20 appeals per year. This is a worst case scenario and is likely to be less, with set-up costs estimated around £16k initially, mainly due to an IT change.
11. The Tribunal Service agreed to undertake to provide costings as the basis for an agreement with prospective licensing authorities. These will set out the basis on which the Tribunals Service is prepared to agree funding. Assuming this is based on recovery of actual costs (rather than a fixed price within agreed tolerances as discussed previously) it will set out the various elements that will be charged back – e.g. judicial costs per hearing day, admin costs per appeal, preliminary hearings. It will also make clear what will be charged as part of the hearing day – e.g. whether reading time/judicial time spent drafting judgements will be included or charged separately.
12. ABS Implementation Group members took an action to consider their preferred approach to payment – i.e. pay upfront with a later adjustment to refund/invoice additional amount based on actual expenditure or receive an invoice for actual costs at the end of the financial year. They will also consider the best way to apportion costs across the different licensing authorities – e.g. in proportion to the number of licensed bodies or based on payment by licensing authority whose decision is appealed.

**ACTION POINT:** members to consider their preferred approach to payment

### **Update on MDP meeting**

13. The framework MOU was the main discussion point of the meeting. In particular, the principal areas for discussion include: coordination of oversight, terminology in the MOU, and information sharing provisions.
14. David Middleton at the SRA is currently progressing the drafting of MOU to reflect the latest discussions. SRA will check the timing of David's drafting and where he is up to. The final draft of the MOU will be presented to the group by end of November.
15. It was noted that Sarah Willison sent a letter to the Legal Services Ombudsman to confirm the Ombudsman's approach to working with the MDP Working Group. She has yet to receive a response.

### **Any Other Business**

16. Ann Wright (IPREG) raised the question as to what the sole practitioner point - which related to the s.69 consultation – referred to. The LSB explained that the point primarily related to whether sole solicitor practitioners are to be regulated as entities or not.