

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

Held on Thursday 5 August 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
Sarah Willison	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)
Dawn Sanderson	Ministry of Justice (MoJ)
Surinder Sawali	Ministry of Justice (MoJ)

Background

This was the ninth meeting of the ABS Implementation Group.

Agenda

1. Minutes
2. Matters arising
3. Update on progress towards ABS implementation
4. LSB to update on current S.69 issues
5. SRA to update on MDP meeting
6. LSB to update on data collection
7. LSB to update on appellate bodies
8. SRA to open discussion on special bodies

9. BSB to discuss the *YouGov* survey of regulation of new business structures
10. Any Other Business

Minutes

1. The minutes from the previous meeting were considered.
2. No amendments were proposed.

Matters arising out of the minutes

3. No matters arose. Minutes were approved.

Update on progress towards ABS implementation

SRA

4. The SRA are waiting on responses back to the May consultation Paper on their Handbook. The consultation closes 20 August and there is a distinct possibility of receiving last minute responses.
5. The SRA have run various roadshow events to promote and discuss outcomes focused regulation. The purpose of these events is to raise awareness of what outcome focused regulations entails. The main comments raised by participants include: how much certainty is there on what constitutes acceptable practice in regulation, and the guidance people need. Also people are interested in information requirements for businesses and other supervision-related matters, as well as further details about the SRA's risk assessment framework for firms.
6. There was also interest at the roadshow events by people interested in information requirements for businesses and other supervision-related matters, as well as further details about the SRA's risk assessment for business.
7. In October the SRA will release their Consultation paper which will cover the authorisation process, fit and proper test, etc.
8. The SRA have been hosting the MDP meeting. The regulators and other professional bodies involved are currently working on a MOU to cover high-level issues and will be completed by end 2010.

IPS

9. has submitted their litigation and probate rights application and IPS are currently consulting on criminal litigation.

CLC

10. The CLC is currently consulting on the draft Code of Conduct and will begin consulting on the other elements of the regulatory framework by the end of September

11. CLC is currently considering information requirements for ABS applicants which would best protect consumers whilst not being unnecessarily burdensome to the applicant. ILEX will begin consulting on the draft licensed body framework by the end of September. The CLC intends to undertake roadshow events to ensure those they regulate are made aware of changes in regulation etc.

IPREG

12. There is an ABS working party at IPREG that will inform IPREG decision-making.

ICAEW

13. ICAEW are contributing to the MDP working group. Currently, there is much dialogue in the institute over legal regulatory issues and the approach to ABS, etc.

BSB

14. The BSB are contributing to the SRA workshop. Much internal thinking is being progressed in relation to litigation, client money, insurance, cab-rank rule. All of this will inform a consultation document on Regulating Entities that extends on the BSB survey of Barristers (produced by *YouGov*) which is currently being prepared for September.

MoJ

15. The MoJ noted the current progress in the better regulation landscape and that the Reducing Regulation Cabinet Committee has already sat and considered their role and upcoming regulations.
16. The MoJ are currently putting together a list of regulation to the Reducing Regulation Committee (10 of which relate to LSA) to advise the Committee of regulations in the legal services industry.

S.69 Issues – LSB

17. The S.69 consultation paper will be published in the coming weeks.
18. The timetable for S.69 issues is that the LSB are preparing the consultation document and it will be published in the next few weeks. It is intended to have the SI and impact assessment laid in the first session of Parliament in 2011.
19. LSB thanks all initial comments to the consultation provided by regulators. The CLC noted that this consultation is welcome due to the open and transparent approach taken.
20. The LSB indicated that the draft SI will go out with the consultation.

SRA – Update on the MDP Meeting

21. The SRA will circulate the minutes from the MDP Working Group Meeting.
22. The main focus of the Working Group is to create a framework and set down key principles such as regulatory overlap, promotion of competition, etc

23. The three working groups have been rationalised to two Working Groups.
24. By December the framework MOU will be in place and more substance around information sharing will be agreed, etc.
25. It was agreed at the last MDP Working Group that the Ombudsman would convene their own working group to sort out specific issues concerning them. It was envisaged that this group would report back to the MDP Working Group.
26. One of the principal themes discussed at the MDP Working Group is the issue of regulatory overlap, which will be addressed through the MOU.

LSB – Data Collection

27. A workshop was held last week on first-tier complaints handling. The main issue was what data regulators need to gather.
28. LSB to circulate a note of the first-tier complaint handling meeting to ABS Implementation Group members.
29. Participants of the first-tier complaint handling meeting recognised the benefit of looking at the issue in a 'big picture' context.
30. It was noted that we need a sub-group looking at data-collection and information monitoring issues. It was suggested that the membership of this sub-group could be from the ABS Implementation Group meeting with the view of ascertaining what is needed in terms of data collection for ARs to regulate firms.

LSB – Appellate Bodies

31. Workshop held on 30 June 2010. The proposal has been developed further since and a draft consultation paper and agreement with the Tribunals Service have been circulated.
32. The LSB has received the draft order for s.80 and will share that shortly with ABS Implementation Group Members.
33. We are proposing that the Order and agreement with the Tribunals Service only names current AR's who have a firm intention to apply to become LAs – ie. SRA and CLC.
34. One risk that we need to remain cognisant of is that the Tribunal Services is merging with the Court Service so there is a risk of changing priorities. It is therefore pertinent to formalise the agreement in writing as soon as possible.
35. LSB's approach is that once SRA and CLC have agreed on the stated approach we will write to the Chief Executive of the Tribunals Service with the proposal for the appellate body.
36. The MOU is of wider interest as the MOU would be the basis on which other applicant licensing authorities would sign up too.

37. The LSB takes the view that the admin costs will be reviewed when we know more information. However, it was noted that the present paper is to firm-up the discussion around admin costs but these costs should not be looked upon as definitive costings.
38. LSB notes that it wants to change the upward appeals route to the Upper Tribunal rather than the High Court, as this would be a more proportionate approach. Having reviewed the proposed drafting this would remove the possibility of using any other body apart from the First-tier Tribunal for the initial appeal. It may be possible to draft something that allowed an appeal to the Upper Tribunal where the initial appeal is to the First-tier Tribunal, but still allowed an appeal to the High Court if the initial appeal was to another body. However, inconsistency in the onward appeal mechanism was undesirable as two parallel bodies of case law might develop (onward appeals from the Upper Tribunal go straight to the Court of Appeal). The LSB is minded to propose that the onward appeal to the High Court is removed completely, meaning that the First-tier Tribunal is the only option for the initial appeal.
39. The LSB intends to issue the consultation on the draft s.80 order on 18 August, and we will include a question about the proposed change to the onward appeal mechanism to the Upper Tribunal.

SRA – Special Bodies

40. SRA want to provide further clarification on special bodies and given that Special Bodies will be out of their transitional arrangements by March/April 2013, we need to begin to investigate the issue.
41. It was noted that an additional complication is that many special bodies suffer from financial problems and this is likely to impinge on their abilities to deal with the Special Bodies issues and the arrangements needed.
42. It was noted that current discussions with special bodies should take into consideration the 'big society' vision of the government.

BSB – Survey of the professional by YouGOV

43. From the survey we get a clear look across the profession. For example, it emerged that barristers, generally, want to work with other barristers and also in LDPs.
44. The survey was designed to initially ascertain knowledge of the Act and to understand what barristers value in their profession and who they would like to work with in new business structures.
45. The conduct of litigation and direct access are big issues for barristers and both issues are canvassed in the survey.
46. Around 35% of barristers are interested in new business structures (BoB, LDPs, ABS).

47. Despite interest in new business structures, the majority of barristers are, nonetheless, interested in keeping the self-employed bar as it is and to work with other barristers.
48. The results of the BSB survey are forming part of the consultation by the BSB to be published in October. Issues such as litigation, holding client money, insurance, etc, will be discussed in depth in the consultation document.
49. The BSB noted the communication challenges with members of the profession. There is a growing need to get more information out there to members as the market and regulatory regime changes.

Any other business

50. The LSB noted that in relation to the issue on the rehabilitation of offenders, the LSB will be undertaking some future work on this issue.