

|                         |                      |                            |
|-------------------------|----------------------|----------------------------|
| <b>To:</b>              | Legal Services Board |                            |
| <b>Date of Meeting:</b> | 27 November 2014     | <b>Item:</b> Paper (14) 65 |

|                                |  |  |
|--------------------------------|--|--|
| <b>Title:</b>                  | Special Bodies – stakeholder update  |  |
| <b>Workstream(s):</b>          | Widening access to the legal services market   |  |
| <b>Author / Introduced by:</b> | Bryony Sheldon, Project Manager<br>bryony.sheldon@legalservicesboard.org.uk / 020 7271 Ext. 0093 |  |
| <b>Status:</b>                 | Unclassified   |  |

### Summary:

Last autumn the Legal Services Board (LSB) issued a stakeholder update to bodies presently benefiting from transitional protection from the need to be licensed as alternative business structures (ABS) under the Legal Services Act 2007 (LSA). This transitional protection means that these bodies can currently provide reserved legal activities without a licence. The bodies broadly fall into three different groups (each with protection under different parts of the LSA). The first is non-commercial bodies/special bodies, and the second and third concern different types of commercial law firm. Our update set out expected next steps/timetables for introducing licensing.

We have said that it is appropriate that licensing applies in the longer-term (which will require support from the Ministry of Justice), and indeed these bodies may be able to apply to become ABS now if they wish. This paper focusses on one of the three groups – non-commercial bodies/special bodies, with a view to giving them an update on next steps. Despite some progress made by the Solicitors Regulation Authority (SRA), there is still no licensing authority with suitable arrangements to license them. In view of this, but also taking the SRA's forward plans into account, we propose deferring further work until autumn 2016.

For the second and third groups, we are reviewing the issues involved with a view to next steps, and intend to update stakeholders in due course.

However, there are still sizeable issues to address before it would be appropriate for the LSB to make recommendation(s) to the Lord Chancellor to make the necessary orders to end the transitional protections.

### Recommendation(s):

The Board is invited:

- (1) To discuss and agree the approach set out above and
- (2) to delegate final sign off of the fuller update statement to the Chairman and Chief Executive

### Risks and mitigations

|                      |   |
|----------------------|---|
| <b>Financial:</b>    | None  |
| <b>Legal:</b>        | None  |
| <b>Reputational:</b> | Any perceived or actual increase in regulation of not-for-profit organisations is likely to come under scrutiny at present. Providing some additional information on the timetable for ending transitional protection is likely to be welcome, although the lack of certainty may still attract some criticism. Providing a further update and maintaining links with stakeholders may help to mitigate this. |
| <b>Resource:</b>     | None  |

| <b>Consultation</b>    | <b>Yes</b> | <b>No</b> | <b>Who / why?</b>                |
|------------------------|------------|-----------|----------------------------------|
| <b>Board Members:</b>  |            | <b>X</b>  | No significant new policy issues |
| <b>Consumer Panel:</b> |            | <b>X</b>  | N/A                              |
| <b>Others:</b>         | N/A        |           |                                  |

| <b>Freedom of Information Act 2000 (Fol)</b> |                                  |                |
|--|----------------------------------|----------------|
| <b>Para ref</b>                              | <b>Fol exemption and summary</b> | <b>Expires</b> |
| N/A  |                                  |                |
|  |                                  |                |

## LEGAL SERVICES BOARD

|                         |                      |                            |
|-------------------------|----------------------|----------------------------|
| <b>To:</b>              | Legal Services Board |                            |
| <b>Date of Meeting:</b> | 27 November 2014     | <b>Item:</b> Paper (14) 65 |

### Transitional protections from ABS licensing – stakeholder update Executive Summary

#### Background / context

1. Transitional protections from the need for some types of body to be licensed as alternative business structures (ABS) exist under the Legal Services Act 2007 (LSA) at present. We have publicly expressed our intention to bring these to an end in the longer-term, as transitional protections and different routes to market should not continue indefinitely. However, this work will be dependent on the support of the Ministry of Justice to take necessary steps under the LSA, including bringing forward relevant orders. To provide a level of certainty on the timetable for this work, we issued a stakeholder update last autumn.<sup>1</sup>

#### The different types of transitional protection

2. Section 13 of the LSA sets out that the question of whether a person is entitled to carry on a reserved legal activity is exclusively an issue for the LSA. A person is entitled if they are authorised, or if they are exempt. Section 18(1) provides that “authorised person” means:
  - (1) a person authorised by an approved regulator or
  - (2) a body licensed by a licensing authority under Part 5 of the LSA.<sup>2</sup>
3. Different transitional protections currently apply to some bodies that fall within the definition of “licensable body” in section 72 in Part 5 of the LSA, meaning that they do not have to be licensed as ABS. The different types of body, and associated timetables from last October’s stakeholder update are:
  - non-commercial bodies/special bodies – by virtue of section 23 of the LSA. We indicated further work was not anticipated before 2015 (with an additional period after that before the transitional protection would end)
  - commercial law firms – by virtue of Schedule 5 to the LSA. We would consult on ending transitional protection once the timetable for the Intellectual Property Regulation Board licensing authority application is clearer
  - Recognised bodies (also known as Legal Disciplinary Partnerships (LDPs)). These are a subset Schedule 5 firms. Schedule 16 to the LSA amended the Administration of Justice Act 1985 (AJA) to permit solicitor firms with up to 25% non-lawyer involvement. Schedule 17 amended the

<sup>1</sup> [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/special\\_bodies\\_-\\_stakeholder\\_update\\_october13\\_final\(amended\).pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/special_bodies_-_stakeholder_update_october13_final(amended).pdf)

<sup>2</sup> which came into effect on 6 October 2011

AJA to permit bodies where at least one manager is a licensed conveyancer. We indicated we would consult on introducing ABS licensing for these bodies at the same time as for firms with rights under Schedule 5.

4. We continue to get a slow trickle of enquiries about next steps, as bodies and approved regulators seek to factor this work into their plans. An overview of the issues and proposed next steps are considered below for the different groups.
5. We propose issuing a further update, but at this point focussing only on the first of these groups. This reflects the need for some additional thinking on issues associated the transitional protections enjoyed by law firms with rights under Schedule 5 to the LSA and recognised bodies. We will issue information to those stakeholders in due course. In the meantime, a reminder of the current position is set out below.

### **Non-commercial bodies/special bodies**

6. Section 23 of the LSA created transitional protection for non-commercial bodies, which are not for profit bodies, community interest companies, and independent trade unions.<sup>3</sup> During the transitional period these bodies are able to carry out reserved legal activities without the need to be licensed by a licensing authority. The transitional protection will only come to an end by order of the Lord Chancellor, following a recommendation by the LSB (with different dates possible for each of the three different types of body).
7. Once commenced, section 106 of the LSA would give non-commercial bodies and low-risk bodies,<sup>4</sup> which are collectively known as special bodies, the right to ask a licensing authority to make an order modifying its licensing rules and/or modifying or disapplying schedule 13 (approval requirements in relation to ownership of ABS). This would potentially reduce the impact of authorisation/regulation.
8. We have said that, on balance, the additional protection provided to consumers (in particular the right to complain to the Legal Ombudsman) by licensing non-commercial bodies/special bodies within a proportionate regime is consistent with the regulatory objectives. This takes into account that this area is likely to involve vulnerable consumers. It therefore remains more a question of when it is appropriate to bring the transitional protection to an end, rather than if.
9. We previously carried out work<sup>5</sup> to understand the extent of change needed to the existing regulatory landscape before ABS licensing could reasonably be introduced. In addition to general principles around the approach to licensing these bodies, the work identified ten key points to be addressed (e.g. fees, compensation arrangements and appeals). A stakeholder update in October 2013 indicated that the LSB will only make a recommendation to the Lord Chancellor once we are satisfied there is at least one licensing authority with

---

<sup>3</sup> Which is in addition to the protection provided to trade unions under section 15 of the LSA

<sup>4</sup> defined in section 108 of the LSA. These are effectively a limited form of ABS in terms of the amount of non-lawyer involvement.

<sup>5</sup> Including a consultation and follow up response document in April and December 2012 respectively:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/pdf/3.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/3.pdf) and

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20121130\\_lsb\\_response\\_to\\_special\\_bodies\\_consultation\\_and\\_next\\_steps.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20121130_lsb_response_to_special_bodies_consultation_and_next_steps.pdf)

appropriate arrangements in place to license these bodies. To take account of the Ministry of Justice review of legal services regulation, we also said that we did not anticipate further work before 2015. We did, though, highlight the opportunity for licensing authorities to maintain momentum on developing appropriate licensing arrangements in the meantime.

10. Because of the nature of activities carried out, the Solicitors Regulation Authority (SRA) is the most likely licensing authority for non-commercial bodies/special bodies for the time being, although other approved regulators have engaged in our work to date. Our previous analysis identified significant concerns about the scope of regulation to be applied in licensing ABS – with this an issue in both the not-for-profit and for profit sectors.
11. Although the SRA has not yet carried out the necessary work to put in place a framework for licensing non-commercial bodies/special bodies, it has taken some steps to help them, including removing restrictions on their ability to charge for services. In addition, we have seen an ABS licence issued to a joint venture between a charity and a law firm.
12. Our ongoing work with the SRA may go some way to addressing the suitability of its licensing arrangements, for example through delivering simplification to its ABS authorisation process. For the time being, though, although it seems to broadly agree with points we have made, for example on the volume of information required from applicants, the SRA has made limited progress. It has indicated a project plan for a review of authorisations will be in place by the end of 2014. SRA initiatives like its plans to tackle the length and complexity of its handbook may also help to deliver necessary change. Details of this are expected to be set out imminently in its strategy and business plan, with implementation currently expected in October 2016. For now, however, there is still no licensing authority with suitable licensing arrangements.
13. Given the above, it does not seem appropriate to restart work on ending this transitional protection at this time. It seems sensible to instead issue a further update to stakeholders indicating that we will reassess the situation once the SRA's review is complete. At this stage we do not anticipate further work before autumn 2016. An additional period will be needed after that – before the transitional period ends – to introduce the necessary legislative changes and to process licence applications from special bodies.
14. A draft update for stakeholders – to be published on our website – is included at Annex A.

#### **Law firms with rights under Schedule 5**

15. The requirement in section 18 of the LSA for a licensable body that wishes to carry out reserved legal activities to be licensed as an ABS is subject to Part 2 of Schedule 5 of the LSA.<sup>6</sup> There are currently some commercial law firms that, but for the transitional arrangements established by Schedule 5 (which refers to transitional periods in terms of the different professional titles), would require an ABS licence.
16. A transitional period (which commenced on section 13 of the LSA coming into effect on 1 January 2010) will end on the day appointed by order of the Lord

---

<sup>6</sup> Section 18(4)

Chancellor, following a recommendation by the LSB. Different end dates can be specified for different transitional periods.

17. Before the LSB can make a recommendation to the Lord Chancellor there must be a licensing authority in place to license these firms. We understand a number of them are currently regulated by the Intellectual Property Regulation Board (IPReg). With that in mind the last stakeholder update said we would consult on a specific date for ending transitional protection once the timetable for IPReg's licensing authority application was clearer. It is expected IPReg will start to accept ABS licence applications from January 2015.

### **Recognised bodies**

18. Recognised bodies are a subset of firms discussed above with rights under Schedule 5. The LSA amended the AJA so that from 31 March 2009 SRA and Council for Licensed Conveyancers (CLC) regulated firms could have different kinds of lawyer and non-lawyer involvement. These firms can only supply legal services (whether reserved or not).
19. For solicitors, Schedule 16 to the LSA inserted section 9A into the AJA, to permit bodies with up to 25% non-lawyer managers/owners (although the SRA can make (and has) rules setting lower limits on non-lawyer involvement). The SRA calls these bodies Legal Disciplinary Partnerships (LDPs). In practice, its Handbook permits far less non-lawyer input. In the case of the CLC, Schedule 17 to the LSA inserted section 32A into the AJA, to permit bodies where at least one of the managers is licensed conveyancer.
20. The effect of commencing Part 5 (ABS) of the LSA in October 2011 was to close the recognised body route (by virtue of the effect of section 13). Although these firms then fell within the definition of "licensable body" in section 72 of the LSA, they benefit from transitional protection under Schedule 5.
21. Our previous stakeholder update said that we would consult on removing this route to market at the same as for Schedule 5. This is consistent with the explanatory notes for the LSA, which state that LDPs would have to become ABS once Part 5 of the LSA was "fully operational and the entire range of ABS was available".<sup>7</sup> Barring provisions relating to special bodies and to the LSB as a licensing authority, Part 5 is now in force.

### **Conclusion / next steps**

22. The timetable for ending the different transitional protections is obviously not fixed and, in practice, might need to involve different end dates. At this point, no immediate compulsion to conclude any or all of them has been identified. While it is right to do this work, there is therefore some flexibility in how we take it forward.
23. Staff will continue to identify the issues involved and to develop project plans. In the meantime, the update at Annex A will communicate the approach discussed above to stakeholders.

### **Recommendations**

24. The Board is invited:

---

<sup>7</sup> Paragraph 431

- (1) to discuss and agree the approach set out above and
- (2) to delegate final sign off of the fuller update statement to the Chairman and Chief Executive

27.11.14

## **Removing transitional protection and ABS licensing**

### **Stakeholder update: special bodies**

This is an update to the position shared with stakeholders in October 2013 on bodies that currently have transitional protection from the need to be licensed as an alternative business structures (ABS). Our focus in this update is solely on special bodies – the first of the three types of body discussed in last year’s update.

We will issue further information in relation to law firms with rights under Schedule 5 of the Legal Services Act 2007 (LSA), and to recognised bodies/legal disciplinary practices, in due course.

### **Special bodies**

The Legal Services Board (LSB) is of the view that there is still no licensing authority with appropriate arrangements in place to license special bodies as alternative business structures (ABS). As such, it is not appropriate for the time being to make a recommendation to the Lord Chancellor to end the transitional protection provided by section 23 of the Legal Services Act 2007 (LSA).

We are aware of plans by the Solicitors Regulation Authority (SRA) to review ABS authorisation process and its Handbook. This work can be expected to go some way to addressing the suitability of its ABS licensing arrangements. As such, it is appropriate to wait to understand the outcomes of the SRA’s work.

This situation will remain under review. However, at this time we do not anticipate further work on this issue before autumn 2016, meaning that there would be an additional period after this date before the transitional protection would come to an end.

### **Further...**

Notes for editors:

- (1) The LSA created the LSB as a new regulator with responsibility for overseeing the regulation of legal services in England and Wales. The new regulatory regime became active on 1 January 2010.
- (2) Our previous stakeholder update that discussed different transitional protections from ABS licensing can be found at [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/special\\_bodies\\_-\\_stakeholder\\_update\\_october13\\_final\(amended\).pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/special_bodies_-_stakeholder_update_october13_final(amended).pdf)
- (3) Section 23 of the LSA created transitional protection for non-commercial bodies, which are not for profit bodies, community interest companies, and independent trade unions. During the transitional period these bodies are able to carry out reserved legal activities without the need to be licensed by a licensing authority.



- (4) Once commenced, section 106 of the LSA gives non-commercial bodies and low-risk bodies, which are collectively known as special bodies, the right to ask a licensing authority to make an order modifying its licensing rules and/or modifying or disapplying schedule 13 (approval requirements in relation to ownership of licensed bodies).
- (5) The transitional protection will only come to an end by order of the Lord Chancellor, following a recommendation by the LSB. The LSB will only make such a recommendation once it is satisfied that there is at least one licensing authority with appropriate arrangements in place to license special bodies.
- (6) The LSB published two previous documents on this issue in April and December 2012. These can be viewed here [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/pdf/3.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/3.pdf) and here [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20121130\\_lsb\\_response\\_to\\_special\\_bodies\\_consultation\\_and\\_next\\_steps.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20121130_lsb_response_to_special_bodies_consultation_and_next_steps.pdf). These considered what appropriate licensing arrangements might look like in this context.