
ABS - was bedeuten sie wirklich?

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<https://research.legalservicesboard.org.uk/>

Mein name ist Crispin Passmore

Ich bin der Direktor des stratgey am Legal Services Board für England und Wales

Ich gehe mit dir reden heute über „ABS - was bedeutet es wirklich? “

Alle Materialien sind auf unserer speziellen Website Forschung.

Das ist die letzte von meinem Deutsch. Entschuldige mich

I will now deliver the rest of the presentation in English – please interrput me if you have any questions.

By way of answering what ABS are about, I want to challenge some myths about the legal services reforms in England and Wales

I will run through the background to the reforms in the UK, and the role of the LSB.

I then want to give you some details on what sort of organisations have become ABS over the past 2 years, and demonstrate that these aren't really that different from other types of law firms.

I want to explain what the problems are that reform is seeking to address, and I will end with some thoughts about how other forms of deregulation might help us address these problems.

Myth 1:

*All was
fine with
the legal
services
market*

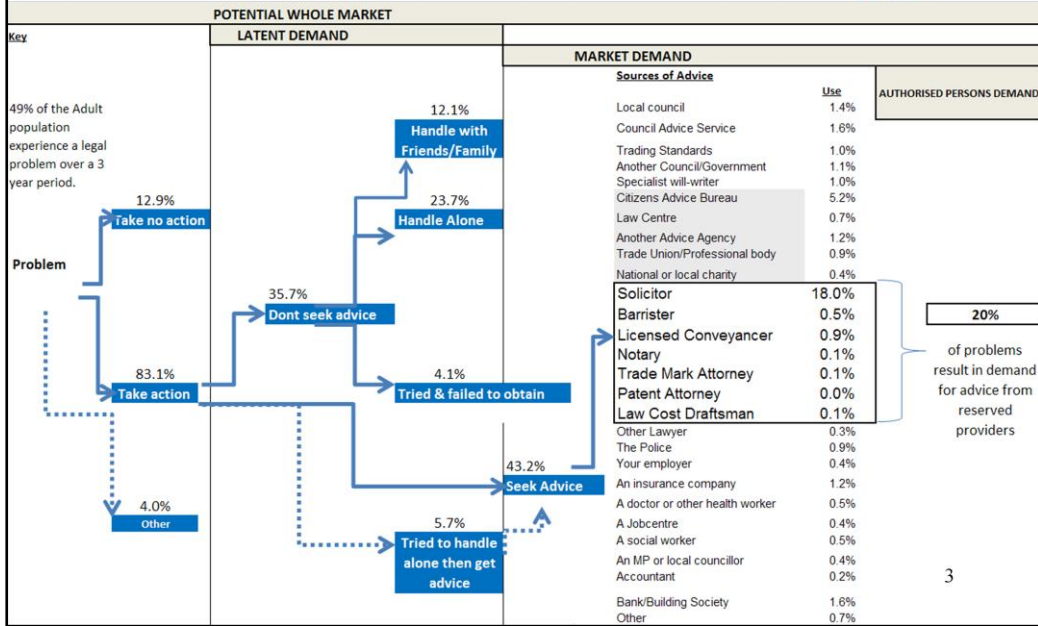


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So then the first myth – all was fine with the legal services market there was no need to reform

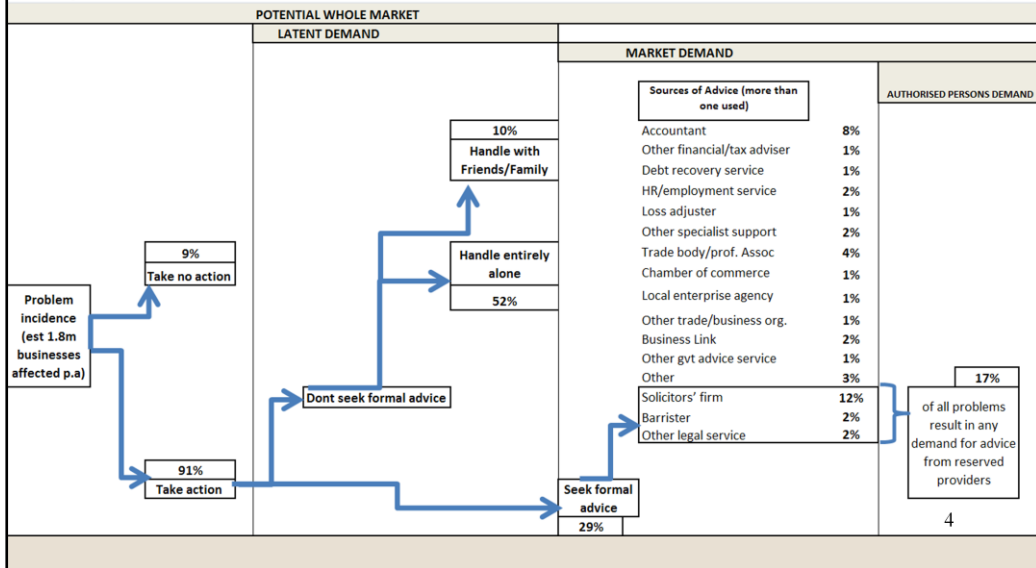
Well.....

Access to legal services is limited for individuals



Legal needs surveys show that millions of people in England and Wales don't go anywhere near regulated lawyers to solve their significant legal problems, even during periods of higher legal aid spending. Around 1 in 3 people with a significant legal problem do not get the advice that they need. This level of unmet legal need or latent demand is not something we'd expect in a legal market where all was fine.

.....and for small businesses



And the same is true for small businesses.

Unresolved legal problems have a cost: example of small businesses



- 45% of problems had a tangible impact:

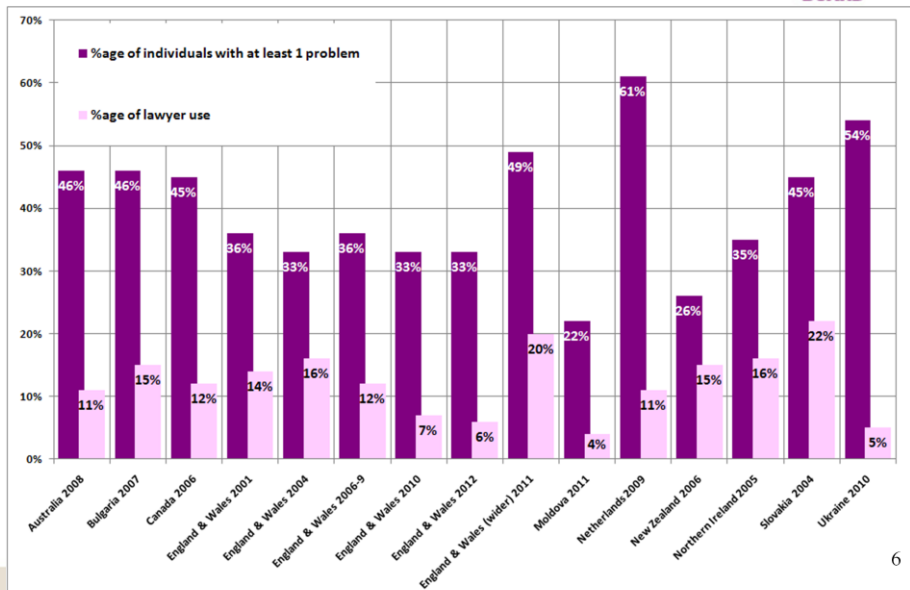
Any impacts	Loss of customer s/contracts	Loss of income	Additio nal costs	Inability to take on new work	Inability to complete work	Other
45%	7%	22%	10%	6%	6%	22%

- Average financial impact: € 7.9k
- Whole UK economy impact **> €100bn p.a.**

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Unresolved legal problems have a cost: a cost for individuals, costs for businesses and costs for society as a whole. This is why change is necessary – unresolved problems are not just an access to justice issue or a rule of law issue – important as they are. This is about growing our economy, helping our citizens and business thrive.

Problem incidence and lawyer usage vary by country

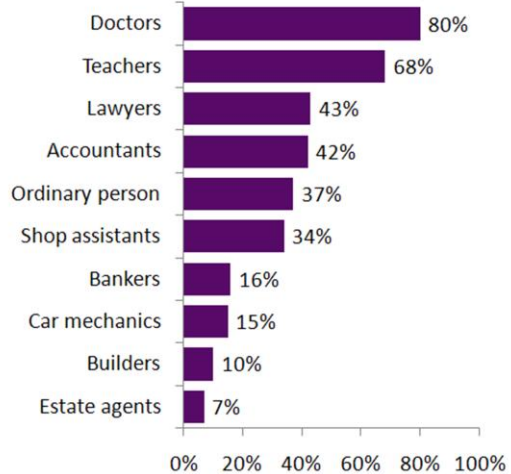
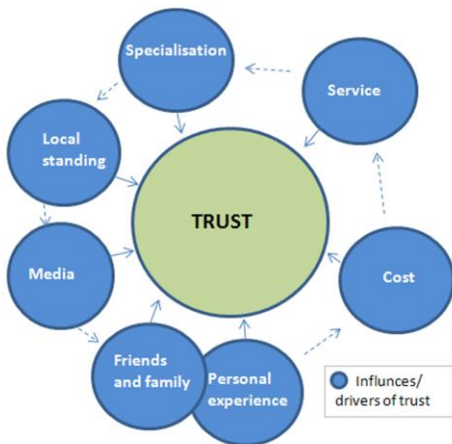


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It's worth noting this isn't just an issue in England and Wales. I don't know the situation here in Germany, but we see similar patterns wherever these sorts of surveys have been undertaken.

So what's going on? These are significant problems with cost implications. Why don't people seek expert help?

In the UK, fewer than of half individuals trust lawyers...



In the UK, fewer than of half individuals trust lawyers. This drives people to resolve their problems in other ways or to ignore them even. I have to ask if the public really thinks that the old legal profession is an ethical institution at risk from unethical forces or if it is actually just like everyone else?

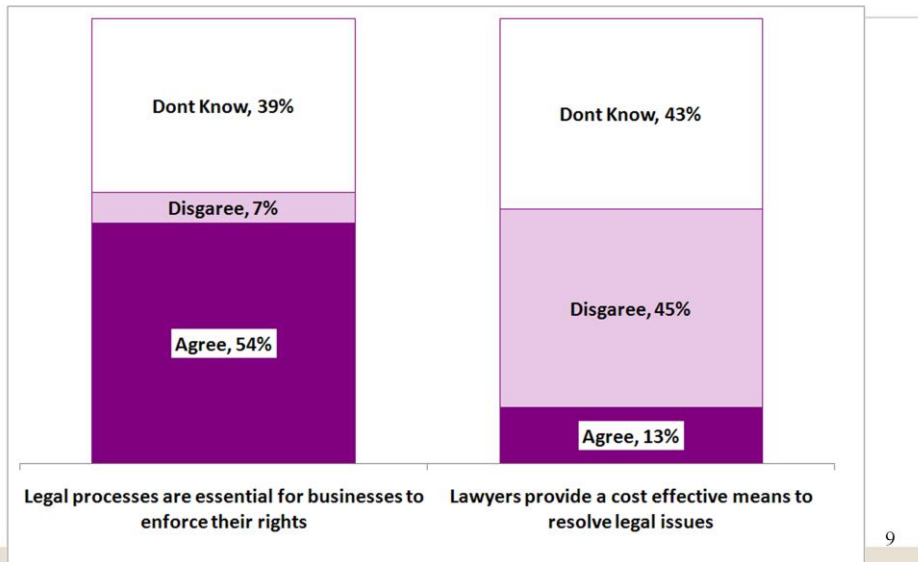
... despite respecting the profession



Despite respect for the profession as a whole, lawyers are just too expensive to be the answer to many peoples and business problems. One lawyer once said to me that most lawyers cannot afford their own services – that seems to me to be an absurd position for the legal market to have ended up in.

More interestingly the research shows a dichotomy. Where they do use lawyers, consumers have positive perceptions of what is being delivered, but negative perceptions of how it is delivered.

Small businesses see law as essential, but lawyers as too costly



What is remarkable from our research is that only 12% of small business thought that lawyers offered a good value way to resolve their legal problems – but 54% thought that lawyers were necessary. Again, necessary but poor value isn't a ringing endorsement of the legal market. But it is an enormous opportunity for any business that wants to innovate and rise to this challenge.

Competition is a way of changing this



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Our conclusion is that access to legal services is held back by the relatively homogeneous provision of legal services in terms of the way services are delivered, the way the services are advertised, packaged and promoted. The way we have historically regulated, including controls on forms of practice and ownership, limits innovation, variety and choice. It might work for lawyers. But it doesn't work for citizens.

Societies are more diverse and complicated than any rule maker can fathom. It always amazes me that some lawyers that make a living out of interpreting statute, managing legal risk for clients and living with uncertainty are so desperate for the comfort blanket of detailed and prescriptive regulation.

Competition is a way of driving innovation in service design and delivery and increasing the affordability of legal services. That means concentrating on the outcomes and allowing differences to flourish without regulators trying to control or approve every model and variation. So its not about helping you or stopping you from running your law business – its about getting regulation out of the way so that is a decision for each business. That way we get variety and choice.

Myth 2:

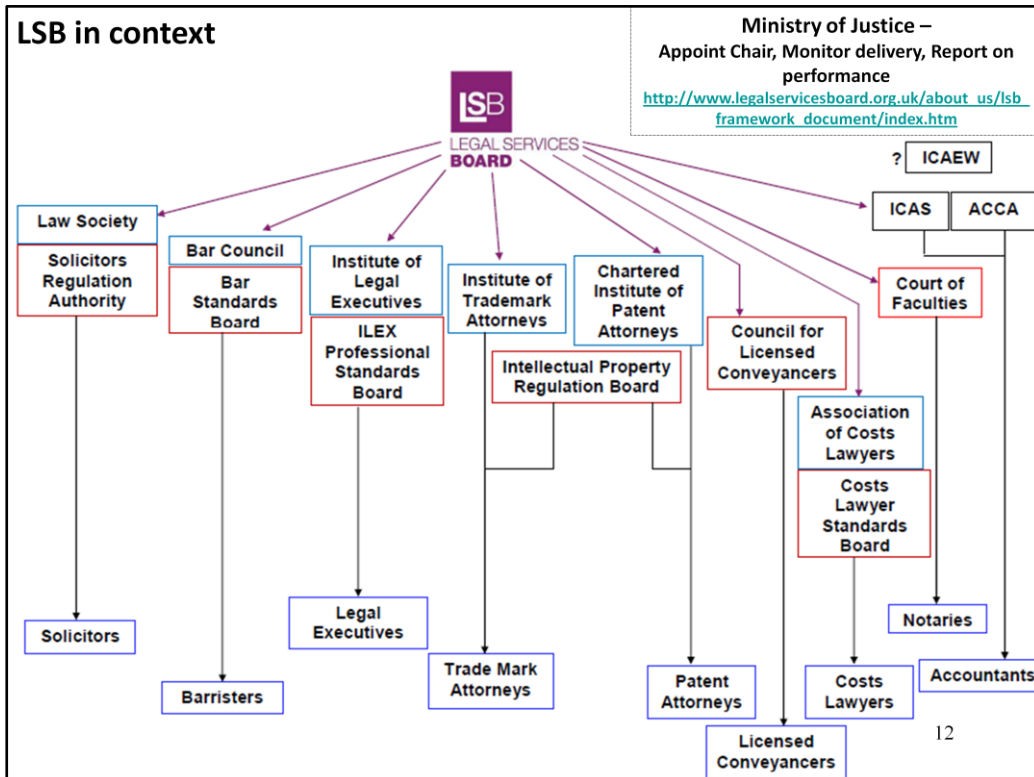
*Oversight will
destroy the
independence
of the rule of
law*



So the second myth – oversight by a Government appointed body will destroy the independence of the legal profession and undermine the rule of law.

Lawyers have been close to Government in the past in many ways. In fact 1 in 7 MPs is a lawyer. Lawyers in UK were historically content for legislation from Government that protected their monopolies. They have been happy in the UK with the head of the Bar being the Government's senior Law Officer. And historically have been happy with judges being appointed by a cabinet minister, or even being a senior judge in the not too distant past.

So let's put the oversight of the legal profession by the Legal Services Board into context to test this myth.



The LSBs role is oversight of the regulators. They are independent of the professional organisations, but they have a close relationship.

We are independent of both the profession and government

We are ‘sponsored’ by the Ministry of Justice but we are paid for by levy on lawyers
 ‘Sponsored’ means we have a framework agreement (published online) whereby they appoint the chair once every three years, and we provide updates on how we are delivering what we set out to do in our business plan.

We consult publically on our business plan once a year – MoJ do not determine its content.

We are very transparent.

This might look like some behemoth overseer, but we are in fact very small...



We are so small in size terms that we don't even show up in 'planet legal services UK'

- the very small dot next to the label shows our size – each bubble is proportionate based on number of people employed.

The LSB is 30 people in overseeing a sector with over 160k legal professionals

That's 1 person for every 5k lawyers. Further, the sector is growing and we are shrinking.

Size isn't the only measure of influence of course, but it serves to illustrate how small we are. Our small size means we have limited resources for influence.

Ultimately how and what we influence is driven by our objectives.....

Legal duty to promote the regulatory objectives



1. Protecting and promoting the public interest
2. Supporting the constitutional principle of the rule of law
3. Improving access to justice
4. Protecting and promoting the interests of consumers
5. Promoting competition in the provision of services
6. Encouraging an independent, strong, diverse and effective legal profession
7. Increasing public understanding of the citizen's legal rights and duties
8. Promoting and maintaining adherence to the professional principles

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Which are set by Parliament and cannot be changed by anyone except Parliament - not the profession; not the Government and not us.

These fuse the benefits of competition and consumer interests with the key principles of law and justice – public interest, access to justice and the rule of law.

We all share this set of legally binding objectives – regulators, ombudsman, and the LSB.

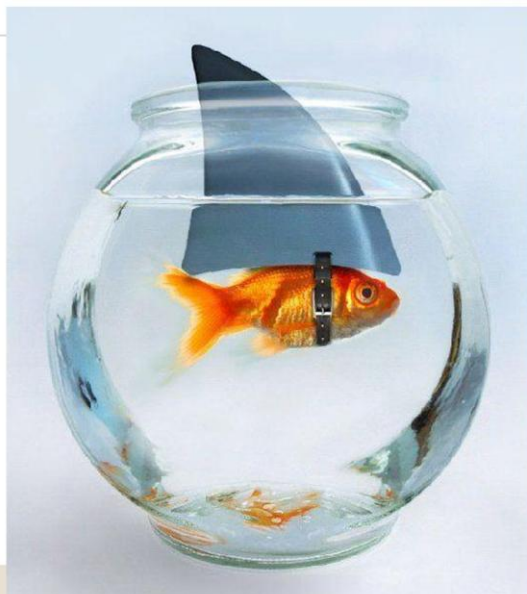
We report on progress toward achieving the outcomes each year, and yes the reports are on our website.

So for the first time in the UK you have a clear statement of what regulation of legal service should be achieving, a set of organisations with a legal duty to deliver against these objectives, and a an organisation that reports on progress each year.

I would argue that this is a rather stronger approach to protecting the rule of law that existed before. There is no threat to independence of legal profession from the LSB.

Myth 3:

*ABS are
dangerously
different*



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The final myth – ABS are dangerously different from other types of law businesses. Business owners will only be interested in profits and not justice, they will cherry pick the most profitable areas of work.

What is an ABS?



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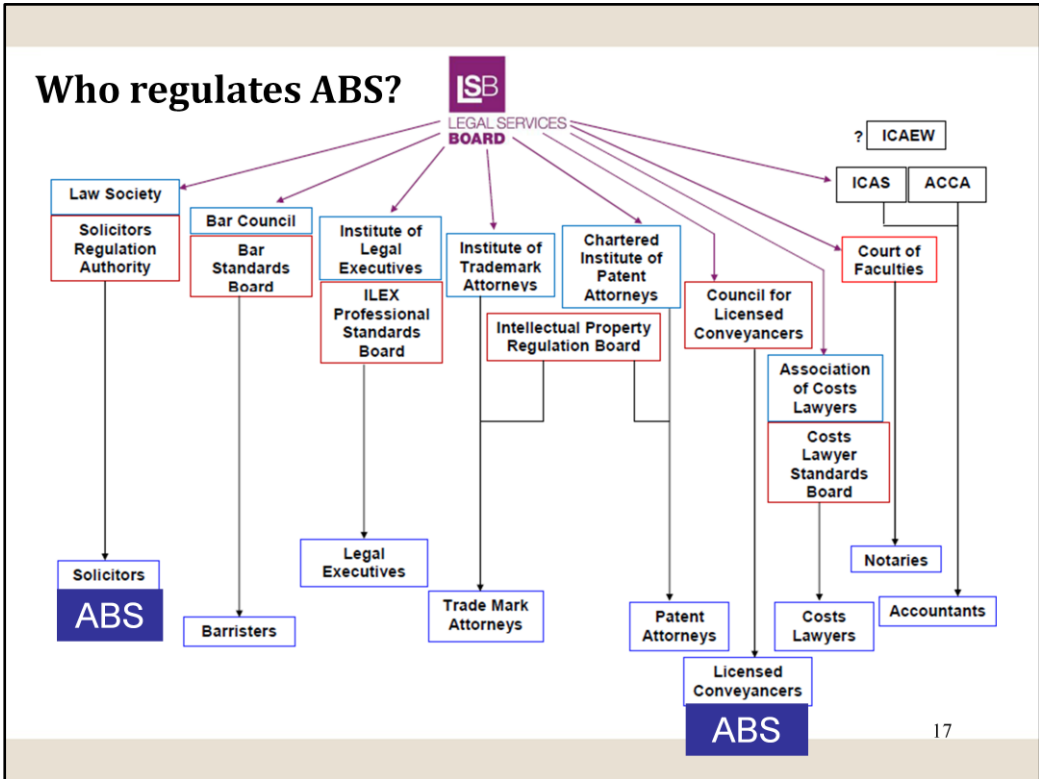
So what are the technical differences between an Alternative Business Structure and a solely lawyer owned business?

Well, firstly the ABS model enables lawyers and non lawyers to share the management and control of a business that provides 'reserved' legal services to the public.

And secondly ABSs allow external investment in law firms – that means less reliance on personal debt, firm overdrafts, and the like, and more access to funds to invest in things like a website that actually deliver parts of the service, a database for holding client details on, or IT systems or expanding into new areas or even countries.

It seems odd to me this obsession with equity. I think that I see equity as a more stable form of long term finance than bank debt – certainly during the last five years it has been. And of course it is easy to structure a business to get around the restrictions. It is after all what many law firms specialise in – helping companies structure themselves to 'manage' regulatory restrictions and requirements, tax rules and other issues in order to allocate capital efficiently, maximise profit and provide better services for consumers.

Perhaps the differences between ABS and traditional law firms are the real myth in the modern world?



They are regulated by the same regulators, in the same structure as other types of business

They do have a licensing process to go through – but so to do traditional partnerships

For SRA - Non lawyer owners and managers need to demonstrate their suitability as an *authorised role holder* and have to uphold the standards in the same way as lawyers

Standards are assessed in terms of character, suitability, fitness and propriety.

The Suitability test:



You must:

1. *uphold the rule of law and the proper administration of justice;*
2. *act with integrity;*
3. *not allow your independence to be compromised;*
4. *act in the best interests of each client;*
5. *provide a proper standard of service to your clients;*
6. *behave in a way that maintains the trust the public places in you and in the provision of legal services;*
7. *comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;*
8. *run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;*
9. *run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and*
10. *protect client money and assets.*

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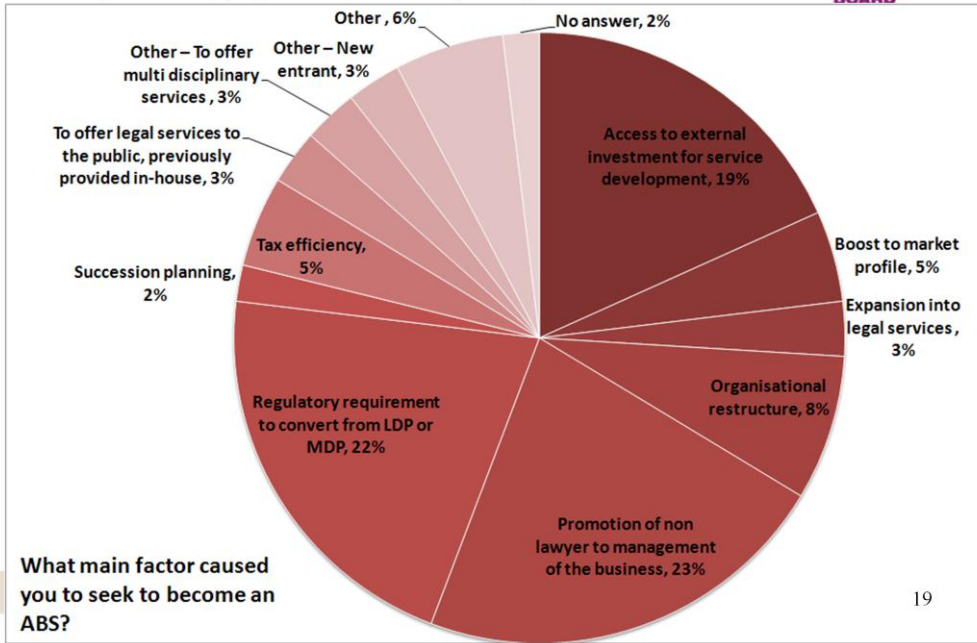
<http://www.sra.org.uk/solicitors/handbook/suitabilitytest/content.page>

These are the same standards for solicitors who want to own a law firm, and not too dissimilar to that which company directors have to pass through.

So the new fish have been swimming among us for two years now. Who are they? Why are they here? What are they doing?

Why did you become an ABS?

Survey of ABS, July 2013, n = 64 (33%)



Well we have been researching this. They became ABS for a range of reasons, nearly a quarter because of regulations, but also to better manage and structure their existing business (23% +8%), and to get access to funds to improve services (19%).

Who has become an ABS?



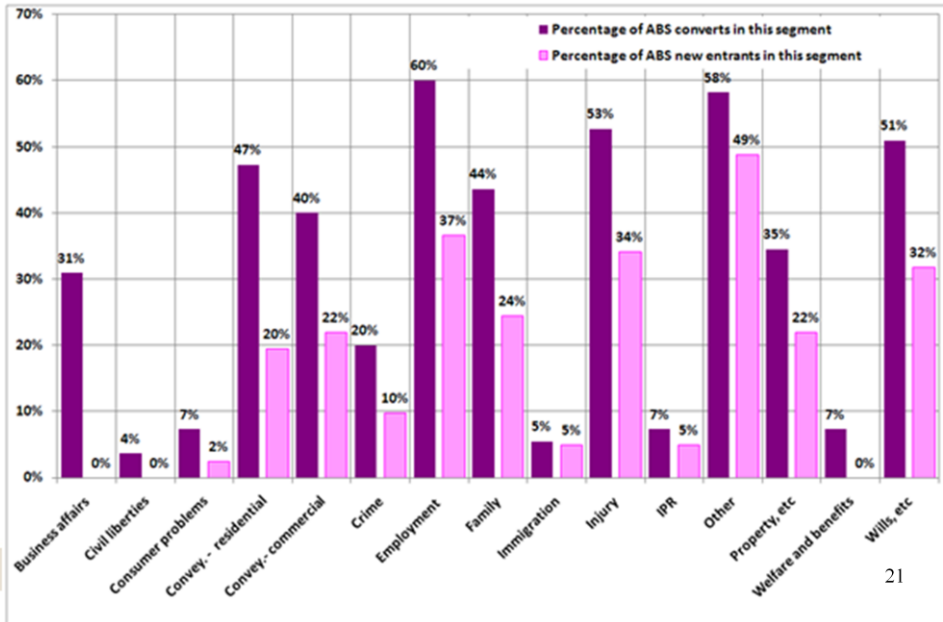
- SRA data (125 ABS – April 2013):
 - 45% of existing firms transferring
 - 55% of firms new to SRA regulation
- Survey (193 ABS – July 2013):
 - 77% of ABS already regulated by SRA or CLC
 - 9% already providing legal services regulated by others
 - 14% new to legal services market
- October 2013 – 233 ABS – 10.7k law firms

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And depending on which data source you use, a big proportion of them were already providing legal services, and now more have moved into regulated sphere. So what are they actually doing?

Which areas of law do they work in?

SRA data (125 ABS – April 2013):



ABS firms provide services in a range of categories – reporting turnover across the whole suite of categories of law.

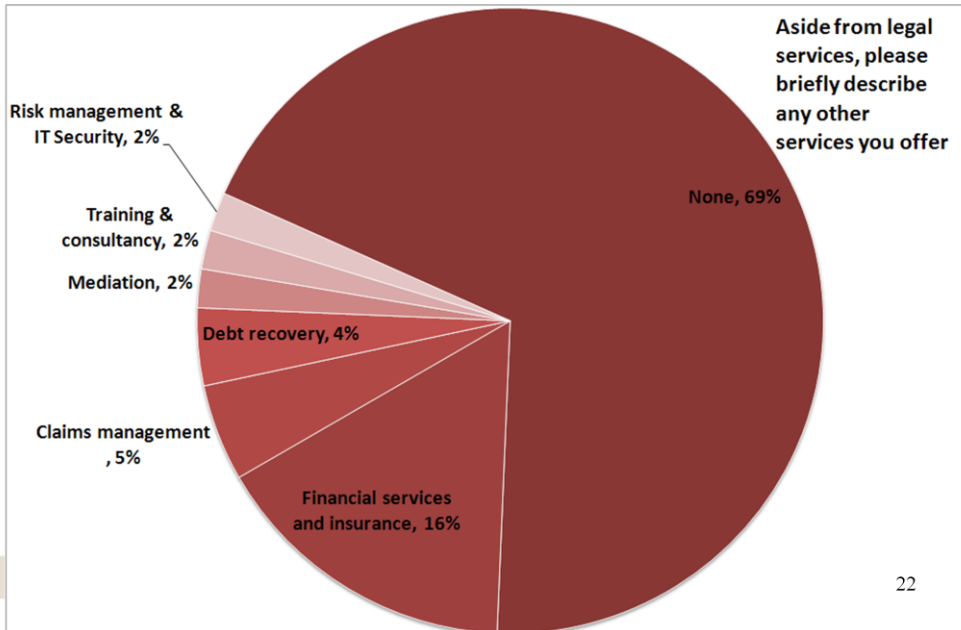
Existing firms who have converted are most likely to be in conveyancing, employment, family, injury, other and wills.

New entrants are most likely to provide services in conveyancing, employment, injury and other.

However the area where to date they have had the biggest impact in terms of market share is personal injury. We think this is in fact driven in part by new legalisation on litigation funding and banning referral fees.

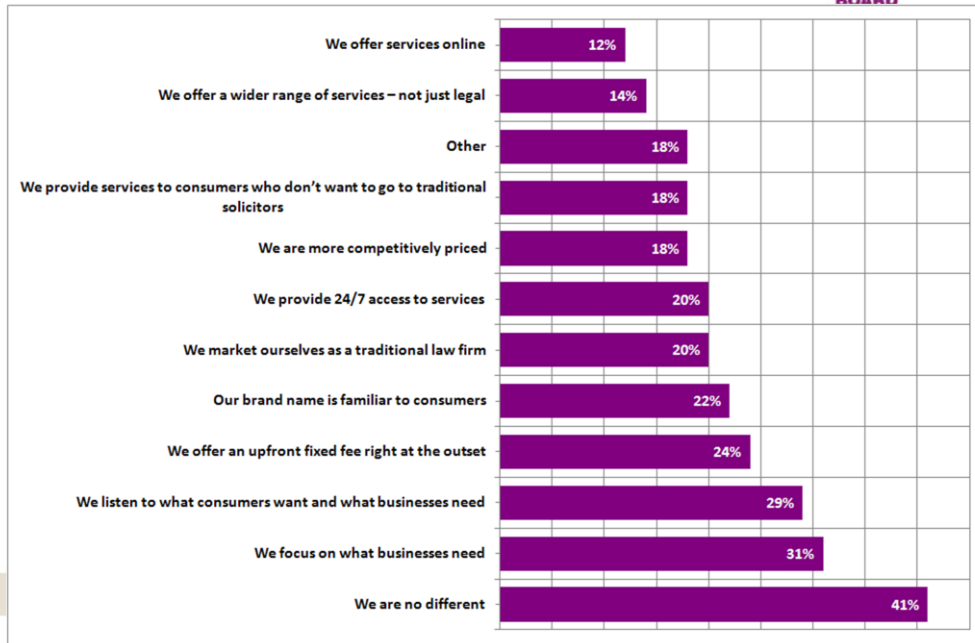
What non legal services do they offer?

Survey of ABS, July 2013, n = 64 (33%)



All types are mainly focused on delivering legal services , though a third offer other services as well - mainly financial services

How are you different to non ABS firms? Survey of ABS, July 2013, n = 64 (33%)



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Many views have been put forward about what ABS firms are like, but few by the group of firms themselves.

So we asked ABS firms how they thought they were different from other law firms, And 41% said they were no different – they are the same as other types of legal services businesses.

Where they did see themselves as different a third of them said they were different because they focused on what the customer wanted.

This shines through when you...

What's changed since they became an ABS?

Survey of ABS, July 2013, n = 64 (33%)



-
- The way they market the services provided – No change 77%
 - The groups of consumers they provide services to – 91% No change
 - Areas of law they provide services to – No change 83%

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...look at what's changed since they became an ABS.

They haven't 'leaped into the more profitable areas of work', ditched some groups of consumers for others, they haven't been rapacious external investors. And at least so far they haven't run off with the client's money.

How are you different to non ABS firms?

Survey of ABS, July 2013, n = 64 (33%)



- *“We are well managed and organised which results in the provision of a good service to our customers. We work hard at customer service and this makes a big difference”*
- *“Our management structure now reflects what our clients would expect from their suppliers - which is not the traditional partnership model!”*
- *“The customer is the whole focus of the business; the way we're set up and how we deliver our services”*

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What they have done is focus on the way they manage and run their businesses, being well organised, and most of all focus on what clients want. We know that they are using different structures to better align a wider range of staff reward with firm performance. And bringing different senior expertise into their business – be it financial, strategy, marketing, business development or IT.

How do we think they are different to non ABS firms? Early indicators:



- **Greater use of technology** – websites 91% v. 52%
- **More likely to provide services to large businesses**
 - 53% v. 33%
- **More productive** –
 - Turnover per fee earner - €133k v. €99k
- **Resolve more complaints at first stage** –
 - 11 for every 1 referred to LEO v. 4 for every 1 referred to LEO
- **Greater use of non qualified lawyers** –
 - 1% of all organisations, 4% of qualified lawyers, 12% of non-qualified lawyers

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We are aware that it is in their interest to say positive things about ABS – an unavoidable selection bias - **We** have looked in detail at how they are different from other firms.

and what we have at this early stage found suggests differences between ABS firms and other types of solicitors firms along some positive lines – more technology, more productivity, better complaints resolution.

Time will tell if these observations hold but the impacts so far are positive – it could be argued that the myth is true – they are dangerously different **because they focus on the consumer interest and pose a threat to the old ways of doing things that we tackled in myth one.**

So far they just look like good law firms to me. But as I say time will tell.

So what does it really mean?



So what does it really mean?

It means innovation, competition, variety, pursuit of excellence, choice.

But we think that these things come from traditional law firms responding to ABS and the threat of competition as much as from ABS themselves.

We see a growth of fixed fee deals, reduction in charging by the hour, and attempts by some law firms to build a national brand. There are also some early signs of improved complaints handling within firms. And evidence of more on line services, unbundles delivery and new ways to combine legal services with other business or personal services.

We are starting to see the market develop transparent choice tools so consumer can make informed decisions about which services to buy and when.

So what does it really mean? Widening access to the law



“the vitality of a market democracy premised on the rule of law... depends on the success with which law manages to serve in fact—not merely on the books—as the fundamental organizing principle of the institutions and relationships of the ordinary citizen. Is law routinely available, for example, to consult before deciding how to choose between market options, or to evaluate how one has been treated in a relationship governed by legal principles? Or is law merely alive in moments of crisis?”

Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans,
Professor Gillian K Hadfield, University of Southern California Law, 2010

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And the fundamental outcome is to make law alive and accessible to all, all the time, not just in a crisis.

Ultimately it means:



Law is for citizens and not just for
lawyers

– Recht muss den Bürgern, nicht nur
den Rechtsanwälten dienen

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Because we mustn't forget what law is for – law is for citizens and not just for lawyers.