City of Westminster and Holborn Law Society
Response to LSB Consultation "Alternative business structures: approaches to licensing"

About The City of Westminster and Holborn Law Society ('CWHLS')

The City of Westminster and Holborn Law Society ('CWHLS') enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years "the silver circle" down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practise at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors' negligence and professional indemnity insurance.

Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, matters affecting their practice, etc.

PRELIMINARY COMMENTS

We would emphasise that the task faced by the LSB in introducing and regulating ABS is a massive one. There are many issues to deal with, and many which do not appear to have been adequately resolved in the LSB's consultation paper. The LSB appear keen to press ahead with the project without a proper appreciation of the difficulties which may be faced on the ground, one particular example is insurance and the interaction between differing levels of professional indemnity cover between different professionals. It is not the purpose of this paper to criticize the work of the LSB, nor to provide complete answers to the many problems which will be faced. We do however wish to place on record our view that the LSB is embarking on a complex journey and it is important that the LSB takes the legal profession with it.

RESPONSE

1. What is your view of basing the regulation of ABS on outcomes?
a. Should all LAs have the same core outcomes?

We believe that there must be consistency between LAs and that there should be common principles at the heart of the regulation of ABS. There is no justification for any LA to operate a system of regulation based on different outcomes. The only possible exception to this is any LA which regulates only special bodies.

b. Are the proposed outcomes appropriate?

We believe that the LSB must provide its proposals for a "set of general regulatory outcomes" in order for us properly to answer this question. We do however consider that a focus on outcomes is not a complete answer to regulation. There will always be particular areas where detailed rules are necessary. A prime example of this is the rules relating to contract races. Whilst the rules could easily be abolished, it would leave solicitors in a hopeless quandary as to what to do for the best. It is not appropriate to abandon certainty for professionals in all cases. There is a need in many areas for black letter rules which have been honed over a long period and which have been proven to work. Can it really be said that non-compliance with provisions of the accounts rules are only a problem when there is actual harm to a consumer? Does it matter if lawyers act improperly if the result is right? We would advocate a sensible division between a focus on clear and sensible outcomes and detailed rules which provide certainty for regulator, regulated and consumer alike.

c. Is the division between entity and individual regulation appropriate?

The division between entity and individual regulation is, at this stage and at first blush, a workable and sensible division. There is no mention of fraud or dishonesty and we would anticipate that these would fall within the individual category, subject to the entity having residual responsibility for any failings in its systems which has made the fraud or dishonesty possible. We are concerned that the LSB appears to be advocating a system which does not make the entity responsible for "information management". Whilst the definition of this term is unclear, it would appear to run contrary to the principles of the Data Protection Act and may be understood to suggest that the entity should not be responsible for management and security of confidential information. This would seem an odd result and we suggest that the term be clarified.

2. Do you think our approach set out to the tests for external ownership is appropriate?

We would place on record that we consider the LSB's comment at paragraph 70 that "people with significant influence are unlikely to have a negative effect on ABS" is unproven and over simplistic. LAs need to be alive to the risk of improper or unlawful influence in ABS and it does no good to pretend that there is no real risk when it is not possible to assess the nature and extent of the risks posed at this early stage. Likewise, we think that the comment in Paragraph 82 that ABS "will make the achievement of the regulatory objectives more likely" is glib and wholly unproven. If the owners of the business are not imbued with the spirit of professional practice which we all share then there must be a greater chance that the regulatory objectives will not be achieved.

a. Should the tests be consistent across all LAs?

Any tests should be consistent across all LAs. It is important that there are consistent (and consistently enforced) standards in the ABS field. The one possible exception is where any LA

regulates only special bodies, in which instance, a case may be made out for applying different ownership tests.

b. Is our suggested approach to the fitness to own test the right one?

We believe that the approach to the fitness to own test requires clarification. As drafted, the test would require disclosure of all criminal convictions, including spent convictions for all offences, including minor offences such as speeding which are fixed penalty and do not require an appearance before any court. It is also arguable (as there is no restriction on "pending proceedings") that any pending civil proceedings should be disclosed. Furthermore, the disclosure requirements extend to all disciplinary action. The question needs to be asked, when does an inspection become an investigation and when does an investigation become "disciplinary action"? Must there be a sanction recommended or actually imposed in order for there to be disciplinary action or is the investigation of a person or his firm sufficient to require disclosure, even where no action is subsequently taken? There is a lot of scope for uncertainty in the disclosure requirements as currently drafted.

We would also observe that it is not practicable to require such disclosure of all owners. There should be no requirement for a fitness to own test for members of the public investing through a recognized stock exchange or through, for example, pension funds and investment funds run by recognized providers, save where the investment is substantial enough to provide a controlling interest or where there is a genuine concern that the independence of the ABS may be compromised.

c. If declarations about criminal convictions are required, should these include spent convictions?

Any convictions which cast doubt on a person's character and integrity should be disclosed, whether spent or not. Any convictions which do not call into question a person's character should not be disclosed if they are spent. These would be minor convictions which did not result in any court appearance.

d. What is your view of our suggested approach for considering associates? Is there an alternative approach that would work better in practice?

We believe that LAs should retain an appropriate level of discretion in relation to considering associates. The issues identified by the consultation paper need to be addressed sensibly and tailored according to the risks posed by the ABS. There should be less onerous disclosure requirements for those where the risk of any undue influence being exercised is slim, such as institutional investors and the disclosure requirements relating to associates should be simple enough for individual lay investors to understand.

We agree that there should be a general requirement on the managers of the ABS that they must report any attempt to exercise improper influence on the part of shareholders/investors.

e. Should there always be a requirement to declare the ultimate beneficial owner of an ABS?

We think that it is important that the ultimate beneficial owner of the ABS is declared. We consider that there may be some limited exceptions where, for example, institutional investors are investing on behalf of others by way of trusts, pension funds or pooled investment accounts. Depending on the risk involved and the size of the holding, it may not always be necessary to disclose all beneficiaries of a trust or fund in all circumstances, particularly where the beneficiary does not have an immediate interest in the trust or fund.

f. Overall, are any modifications needed to ensure that our approach work in a listed company?

On the assumption that the listed company will appoint one or two individuals to exercise its voting rights, we consider that it would be possible for the requirements to be that a listed company undertake a reasonable search and disclose any connections which they consider may pose a risk to the independence of the ABS. The individuals exercising voting rights could be required to certify that their votes have not been influenced in any way, or asked to inform the HoLP if anyone seeks to influence their votes.

g. Overall, are any modifications needed to ensure that our approach work in very small companies?

Very small companies are likely to be able to disclose much more detailed information about "associates" much more easily. It is also more likely that small companies may be used by individuals attempting to further their own ends, for whatever reason. We therefore consider that it is reasonable for small companies (of less than say 15 employees) to certify whether or not their "associates" have any shareholdings, and be subject to the fitness test where applicable.

h. Do you think that the definition of restricted interest should change?

We think that the position should be kept under review as the practice relating to ABS unfolds. It is very difficult to reach an informed opinion in the absence of information as to what happens in practice.

i. Do you think that covenants should be required from those identified as having a significant influence over an ABS?

Yes, we think that a standard form of covenant would remind those with significant influence of their specific responsibilities in the ABS environment. We consider that tailored covenants would be difficult to police in practice. They may vary widely in scope and may lead to a lack of consistency and/or transparency. Any risk presented by an owner with significant influence could be managed by a standard form of covenant and under general principles of law and should not need specific covenants. Where the risk presented is so great as to require a specific covenant from the owner in question that he will not attempt to exert improper influence on the ABS, its managers or employees, we consider that the holding should not be permitted at all.

We would advocate the dissemination of information about the rights and responsibilities of the ABS as an entity and its managers and employees as well as shareholders/investors to all persons with a controlling interest in order that each investor is aware of their obligations.

j. How should the LSB respond to the information it receives about information on action taken against people that falls short of disqualification?

The LSB should maintain a register of action taken by the LAs. It may be that there is cumulative information on a person or group of persons provided by a number of LAs which would justify disqualification and which information may not be available to the LA. Otherwise, the LSB should not interfere with the decision of the LA unless, with the benefit of expert advice, it considers that the decision taken by the LA is manifestly incorrect.

3. Do you have views on how indemnity and compensation may work for ABS?

a. How should an appropriate level of PII be set for ABS that are carrying out a variety of different activities, not all of which are currently regulated by the ARs?

We consider that the various different approaches to PII adopted by the legal service regulators, not to mention the regulators of other professions may present a bar to arranging a coherent policy on insurance. Whilst it is natural for one type of professional to consider that the arrangements in place for their own profession should be rolled out across competing ABS in pursuit of the elusive "level playing field", this is not practicable given the differing approaches to insurance. We consider therefore that a simple approach to PII is desirable.

We would advocate the use of commercial insurers, subject to minimum terms which protect the public by: -

- preventing insurers avoiding a policy for material non-disclosure
- setting a minimum level of cover
- requiring insurers to provide run-off cover if the firm closes
- providing adequate cover for negligence
- making insurers liable for any excess which the firm is unable to meet

We would suggest that the Law Society's current minimum terms are a workable model from which to start. They provide excellent consumer protection and we consider that the level of protection should not be reduced. It is paramount that the public in general and clients in particular be protected from negligent or fraudulent practices and it would seem that commercial providers will be best placed to provide flexible cover which is tailored to the individual requirements of the different types of ABS which may emerge.

b. Should there be minimum PII levels, which are the same for all LAs for different types of activity?

We think that there should be minimum PII levels which are the same for LAs as the level of cover which is desirable to protect the public does not vary depending on the LA, but rather on the nature of the work involved and the risks associated with transactions of that type. For this reason, we advocate that a standard minimum level of PII cover be introduced across all LAs for all ABS and non-ABS firms. It is not practicable to vary cover dependent on work type as there are problems with definitions and it is important that there should be a level playing field.

We would also highlight that there should be common rules concerning limitation of liability. It is important that clients are not prejudiced by differing rules permitting different professionals to limit liability. The protection of the public must be standard and is, of course, paramount.

On this point we would note that we disagree with the suggestion put forward by the Land Registry at paragraph 120 that large organizations will not need the same levels of cover due to their financial liquidity. It seems to us, in light of the fact that many of our large banks were facing ruin not so long ago, there is no merit in suggesting that a large institution is somehow immune from financial problems. In our view, insurance should be mandatory for all institutions at appropriate levels.

c. Are Master policy arrangements appropriate for ABS?

We consider that a Master policy arrangement is unlikely to be flexible enough to cover all the possible permutations of ABS. That said, we can see no other reason why a master policy should not be maintained, other than the obvious practical difficulties of arranging policies which may cover vastly different firm structures and the likelihood that certain types of firm will ultimately end up subsidizing other types of firm through contributions to the policy.

d. What would be appropriate arrangements for runoff and successor practices to enable sufficient commercial freedom for ABS as well as protection for consumers after practice closure?

We are generally in favour of the SRA's current suggestions regarding successor practices and run off cover. We believe that it is more conducive to competition and beneficial to clients and the public if a line may be drawn when a practice is closed and therefore we would advocate a default position whereby the dissolution of a practice, in whatever manner, requires that run off cover be obtained. If a practice is merged, in its entirety as an ongoing practice, with another practice, we would suggest that it is appropriate for the new entity to be a successor practice to both former practices.

We would note that the standard run-off period of 6 years will not cover all claims. In the case of minors, time does not start to run until they are of age; claims involving remaindermen may arise long after the 6-year cover has elapsed. The solicitors' profession has measures in place to pay claims notwithstanding that they are uninsured. What arrangements do other professions have and how do we harmonise the approaches sensibly?

e. What should the requirements be for compensation funds in ABS?

It is important that there be a level playing field between ABS and non-ABS and that there should be no reduction in client protection. That said, the compensation fund requirements for ABS will depend on the structure which is chosen to insure them. On the assumption that PII will be procured from commercial providers, we believe that the compensation fund requirements should be the same as for solicitors.

f. How could a compensation fund work in an ABS environment, in particular when the services offered by the ABS may be much wider than legal advice and where an AR may not currently have a compensation fund?

We believe that everyone should provide cover to the standards currently set by solicitors. It is a complete cover scheme which means that clients should not lose out in any circumstance where they have a valid claim. In practice, this means that all LAs will need to be involved in a compensation fund whether they have one of their own or are able to pool resources with another LA or AR.

4. Do you agree with our position on reserved and non-reserved legal activities?

a. Do you agree that ABS should be treated in a consistent way to non-ABS?

Yes, insofar as it is practicable and does not create additional risk for clients.

b. Should all legal activities undertaken by an ABS be regulated or just reserved legal services?

All legal activities should be regulated in the same way as non-ABS firms.

c. What role do you see consumer education playing?

Consumer education is important but it will only be effective if done on a case by case basis. Our collective experience suggests that many clients, particularly individuals involved in one off matters will simply not pay attention to reams of information relating to concepts with which they are not familiar such as the effect of regulation on different business structures. The LSB and LAs should bear in mind that many individual clients will only see lawyers very rarely and are likely to be utterly confused if presented with comparisons as to what protection they get from regulation.

We would suggest that each LA issue clear guidance on the key information which consumers should be given which should be set out in clear language and which should not have the effect of making the consumer distrust his advisers.

d. How should ABS which are part of a wider group of companies be treated?

It is difficult to answer this question as there are many possible permutations of a group involving ABS. In broad terms, the treatment of an ABS which happens to be part of a group should not be differentiated from the treatment of other forms of ABS or non-ABS. There may be a need for specific

restrictions on the flow of information within the group to ensure that confidentiality is maintained and there may be a need for specific safeguards to prevent the transfer of assets and to guard against insolvency of another group member.

5. Are the enforcement powers for LAs suitable?

a. What is your view on the proposed maximum level of financial penalty that a LA can impose on an ABS?

We are content that ABS should face an unlimited fine if they act in breach of their licence conditions. We do not however believe that the proposal put forward by the LSB, that the LA should have direct power to impose an unlimited fine, subject to a right of appeal is fair or proper.

Disciplinary sanctions, in each branch of the profession, are currently imposed by an independent tribunal or panel. There are specific powers, in the interests of expedience for some ARs to impose low fines without a formal procedure and these have only recently been introduced. They have not been tested for compliance with basic Human Rights provisions but, even if they may be technically compliant, they are inherently wrong. It seems to us to be contrary to the intentions of Parliament and the principles of natural justice that an LA should be given the power to impose unlimited fines. These powers should be reserved to an independent disciplinary body.

b. If you do not consider the proposed maximum to be appropriate what amount or formula would you propose?

As mentioned above, we consider that there is no bar to an unlimited fine, imposed by an independent tribunal, but not by an LA or AR.

c. Will LAs have sufficient enforcement powers?

As mentioned above, we do not believe that LAs should have the power to impose fines. Even without the power to impose fines, we believe that LAs will have sufficient enforcement powers to carry out their regulatory functions. The LA will have the necessary regulatory powers, such as the power to impose conditions on the ABS, suspend or revoke a licence and, in extreme cases, intervene. We assume that there will be no difficulty in an LA entering into a memorandum of understanding with ARs with respect to the imposition of conditions on individual practicing certificates, where the LA has no direct power in this respect. We consider that these powers should protect the public from unnecessary risk, if used appropriately. The power to impose sanctions for breaches of rules (such as fines) should, we believe, be referred to the LAs independent disciplinary body and any such decision promulgated to all other LA disciplinary bodies.

d. Will ABS have sufficient clarity as to how the enforcement powers may be used?

We believe that it would be helpful if the body of caselaw relating to interventions and the imposition of conditions were to be made available to LAs. We believe that this would assist the LAs in providing

clear and useful guidance to ABS as we do not see that there is any good reason for departing from the clear principles laid down by the High Court over the past 30 years. We consider that those involved in ABS ought to be sufficiently sophisticated to understand that the best way to protect the public interest is to afford an LA a degree of flexibility in exercising its enforcement powers, provided that it acts reasonably and proportionately.

e. In what circumstances should a LA be able to modify the terms of a licence?

Where, in the reasonable opinion of the LA, it is necessary to protect the public from an identifiable risk and where the condition is proportionate and reasonable to address the risk identified. This is the test which has been imposed for many years in respect of individual practising certificates and which has been endorsed by successive Masters of the Rolls. We see no reason for abandoning the sensible guidance provided by various Masters of the Rolls in favour of a new test which will need to be tested and refined in future.

In the initial period of ABS, we see no reason why there should need to be a "trigger" event which vests the power to impose conditions. When the specific peculiarities of ABS become clearer in future, this may be a task which could be considered however, for the time being, we believe that it is in the public interest for the LAs to maintain a general power to impose conditions as necessary in order that risks can be addressed as they are presented.

f. Are there appropriate enforcement options for use against non-lawyer owners?

Yes. As against a non-lawyer owner who is not also a manager or employee, the LA has the power to "blacklist" the owner and/or to refuse a licence to an ABS in which he is involved.

As against a non-lawyer owner who is a manager or employee, the LA will have further powers to regulate his individual conduct.

6. What do you think of our approach to access to justice?

a. Do you think the wide definition to access to justice that we have taken is appropriate?

We are somewhat confused by this question as we cannot see that the LSB has put forward a proposed definition of access to justice. The concept remains nebulous and it is difficult to see how the LSB propose to promote a concept which they have not defined and so cannot measure. We are however very distressed that the LSB has unilaterally determined that the debate on whether or not access to a local lawyer is an important part of access to justice is closed. We do not think that it is closed and we would strongly suggest that access to a local lawyer for matters in which liberty and civil rights and obligations are at stake is of vital importance to the most vulnerable in our communities. Email, letters and telephone access to a lawyer simply will not suffice to explain complex problems to the most vulnerable individuals. The cost of travel and transport is ever increasing and it is the poorest and least educated – i.e. those who most need the guarantee of

access to justice, who are most at risk. The risk of failing to recognize the value of local legal services is that access to justice for those who most need it will be permanently compromised.

We consider that it is appropriate to adopt a wide definition of access to justice. We do think that it is necessary to set measurable benchmarks by which progress can be assessed. Whilst these may not cover every aspect of access to justice, they will at least provide an indication of the sort of factors which may be taken into account.

b. Is asking an ABS on application how they anticipate that they will improve access to justice a suitable approach?

No. First, it is a pious hope that ABS will be primarily driven by a need to improve access to justice. These will be commercial firms and it must be recognized that any impact on access to justice is secondary to the commercial considerations which drive the firm. We also consider that it is unfair to require the members of an ABS to comment on their contribution to access to justice whilst that concept remains undefined. We think it would be better for LAs to develop a list of short questions relating to information which the ABS would have reasonably to hand. The LA could then take a view on whether there is a need for further investigation into questions of access to justice.

c. Do you agree that restrictions on specific types of commercial activity should not be put in place unless there is clear strong evidence of that commercial practice causing significant harm?

In general terms, we agree that there should be no restrictions unless there is clear justification for them. Any practices which are anti-competitive would, of course, be referred to the Competition Commission. That said, ABS is a new concept and the LSB has stated that LAs should be alive to developing risks during the early stages. This proposal would appear to be at odds with the need to take action early to prevent harm as the LA would need to demonstrate that significant harm is being/has been caused. We do not think that it is appropriate to restrict the actions that an LA may take in this way.

We count among our number those who regularly deal with solicitors' disciplinary proceedings in one way or another. Our experience is that many solicitors face allegations of misconduct which are proven even though there is no evidence of actual harm to clients. Just because there has been no actual harm does not mean that the practice is necessarily acceptable in a professional firm.

There is also the question of what might constitute "significant harm" – does this include only financial harm to clients or could it include the potential for the reputation of the profession to be damaged? We consider that the test proposed is too restrictive. It should be open to the LA to restrict certain types of commercial practice where there is an appreciable risk of harm to clients, the public, access to justice or the reputation of the profession.

d. Do you agree that LAs should consider how ABS in general impact access to justice rather than trying to estimate the impact of each application singularly?

Yes. Whilst it is undeniable that all aspects of improving access to justice should be considered, we believe that, for practical reasons, the impact of an individual ABS should only be considered where it will have an appreciable affect on access to justice. This is likely to be in circumstances where an ABS, whether by accident or design has such a presence in any area or market that it is effectively a monopoly.

e. Do you agree that LAs should monitor access to justice?

We do not see how we can disagree, given that the promotion of access to justice is a regulatory objective. We can see practical difficulties and we would advocate the introduction of measurable benchmarks as noted above.

7. What is your view of our preference for a single appeals body?

a. Should, in the future, a single body hear all legal services appeals?

We are uncertain as to whether the LSB is canvassing views on appeals from administrative decisions of the LA or whether it is advocating a system whereby the LA makes all first instance decisions so that any disciplinary sanction would come before an independent body only by way of appeal.

We are strongly opposed to the LSB's proposals in relation to the LA (the investigating body) also acting as a court of first instance. As an organization representing solicitors, we would invite the LSB to consider that, of all the criticisms made of the structure and regulation of the solicitors' profession, no-one, from Sir David Clementi to Lord Hunt has recommended that any change of substance be made to the Solicitors Disciplinary Tribunal. Neither the Legal Services Act nor the Tribunals Courts and Enforcement Act proposed that the Solicitors Disciplinary Tribunal be brought within the ambit of the Tribunals Service. The record of the Solicitors Disciplinary Tribunal speaks for itself. Furthermore, it would require the amendment of primary legislation to alter the form and jurisdiction of the Solicitors Disciplinary Tribunal. We wish to express, in the strongest terms, our support for the work of the Solicitors Disciplinary Tribunal and we entirely reject the implicit criticism of that organization in the LSB's consultation paper. We believe that our support is entirely borne out by the attitude of the High Court towards the Tribunal.

It is our submission that the LA should be the investigating body with jurisdiction to impose fines or sanctions which are relatively minor. Each LA should have an independent disciplinary body which is capable of constituting "an independent tribunal" within the meaning of the ECHR. The disciplinary body should have responsibility for determining more serious breaches and only the disciplinary body should have the ability to order than an individual be struck off or disbarred. We would point out that disciplinary proceedings may carry very severe consequences, affecting the livelihood of many. It is important that the principles of natural justice, including the right to a fair trial are strictly observed. As the LSB will know, disciplinary proceedings are sui generis, attracting some of the protections of the criminal law but not subject to all of the procedural requirements. It is our submission that a properly constituted court of first instance with clear and transparent procedures is necessary.

If the decisions are taken by the disciplinary body, it seems appropriate that the right of appeal should be to the Administrative Court. This is appropriate as the High Court has the necessary public law expertise to deal appropriately with regulatory matters and it would ensure consistency across ABS and non-ABS and across differing LAs. There would be no need to make special arrangements for the promulgation of judgments as High Court judgments are already widely disseminated. Furthermore, the decisions of LAs would (we assume) be amenable to judicial review and any such applications would be made to the Administrative Court. It is appropriate that the High Court should have the final say in matters of professional discipline given that it is one of the duties of legal professionals to uphold the rule of law and their duties to the Court.

b. If you don't think there should be a single body, who should hear appeals from LSB decisions should it become a LA?

As noted above, we do not believe that disciplinary decisions should necessarily be made by a LA. We have reservations about the LSB becoming a LA as it would mean the LSB becoming a frontline regulator and, as we understand the position, this was never the intention of Parliament, or Sir David Clementi.

If the LSB were to become a LA, we consider that it would be reasonably practicable for the LSB to refer disciplinary matters to one of the existing disciplinary bodies and we would suggest that the Solicitors Disciplinary Tribunal would be best placed to take on the role. If necessary, the disciplinary body in question could direct that the LSB prosecutor adduce evidence of best practice in other areas of the profession in order that the disciplinary body does not make decisions which are inconsistent with those of other bodies.

c. Is the FTT, GRC an appropriate body to hear appeals?

At present the FTT, GRC has no specific expertise on matters of lawyers' professional discipline. None of the legal disciplinary tribunals were incorporated into the tribunals system when it was set up. Whilst it is the most appropriate chamber of the first tier tribunal, we consider that the existing disciplinary bodies, in particular the Solicitors Disciplinary Tribunal have more to offer in terms of expertise and a coherent body of previous decisions.

d. What other options for the location of the body?

1. Solicitors Disciplinary Tribunal with the addition of members of other professions as necessary.
2. Special body drawing members from existing disciplinary panels to enable sharing of experience and deal with cross profession conduct issues
3. The Administrative Court

8. Do you agree with our approach to special bodies?

a. Do you think that special bodies' transitional arrangements should come to an end?

Yes, providing that there are appropriate provisions in place to ensure that special bodies are not adversely affected by the end of the transitional arrangements.

b. Do you think 12 months after the start of mainstream ABS is sufficient time for them to gain a full licence?

It depends on the licensing proposals. It is too early to say at this stage. We would anticipate that 12 months would be sufficient however it is too soon to fix that period with certainty.

c. Do you think LAs should adapt their regulation for each special body?

As far as possible, regulation should apply equally to special bodies, mainstream ABS and non-ABS. We consider that LAs should have some flexibility to grant waivers of certain rules to special bodies if there is a reasonable justification to do so. That said, we understand that there are moves afoot to refocus regulation and it may be that there is no need for any exemptions.

d. Do you agree there are some core requirements that all special bodies should meet? If so, what do you think these are?

See Rule 1 of the Solicitors Code of Conduct.

e. What are your views on the suggestion that the OLC should make voluntary arrangements with special bodies?

We think it appropriate that the OLC should be able to consider complaints from clients of special bodies as necessary.

9. Do you think that our approach to HoLP and HoFA is suitable?

a. Do you think that our approach on focussing on compliance systems across the organisation is suitable?

Yes.

b. Do you think that HoLP and HoFA should undergo a fit and proper test?

Yes, on a one off basis. This would have the added benefit of providing reassurance to regulators, investors, clients and insurers and would be a commercially acceptable approach.

c. Should there be training requirements for the HoLP and HoFA?

Yes. It is our belief that there should be increased training requirements, in particular in respect of mandatory refresher training on accounts rules, for all persons with responsibility for compliance, including in non-ABS firms.

d. Do you agree that the HoLP and HoFA could be the same individual (especially in small ABS)?

Yes unless there is specific evidence that an individual is not able to carry out the two roles effectively.

10. Do you think that our approach to complaints handling is suitable?

a. Do you think that ABS complaints should be handled in the same way as non-ABS complaints?

Yes, unless they relate to allegations of undue influence or different professions.

b. Do you think that ABS should be allowed to adapt their complaints handling systems if they already have one for their non-legal services consumers?

Yes.

c. Do you think it is appropriate for the OLC take complaints from multi disciplinary practice consumers and refer where necessary?

Yes. It should not be the job of the consumer to assess the most appropriate venue for his complaint and it would seem that the OLC would be ideally suited to act as a filter in these circumstances.

11. What are your views on our proposed course of action to conduct research and, depending on the results, either compel transparency of data or encourage it?

a. Do you agree with our position on diversity and ABS?

Yes.

b. Do you agree that the overall impact is unlikely to be adverse to the diversity of the profession?

Yes.

c. Do you agree that non-lawyer managers may open new career paths to lawyers and these may have a positive impact on career progression?

It is possible but there is no real evidence either way.

d. Do you agree that the demand for diverse legal professionals will, largely, offset the potential impact due to the closure of small firms?

This presupposes that small firms will close. We cannot see that this is an inevitable result of the introduction of ABS, indeed we understand that there are proposals for ABS in which small firms may increase as part of ABS by virtue of costs savings due to shared services and a level of cohesion amongst small firms co-operating through an ABS structure. That said, there is no evidence either way about the potential impact on smaller firms. We do agree that it is likely that small firms will close.

We cannot disregard the apparent lack of diversity in larger firms. Is this a function of the current restrictive legal structure of firms or a manifestation of institutionalised racism/sexism which becomes apparent only when operating on a large enough scale?

e. Should the LSB require information about the diversity of the workforce in ABS? If so when and should this be a requirement for other legal service providers?

No. This is not information which the LSB, as oversight regulator, would need. It smacks of micro-management. There may be an argument that LAs should monitor diversity through the profession in order that they can ensure that their own policies and procedures promote equal opportunities.

12. Do you agree with our approach to international issues?

We agree that there is no reason to restrict ABS to this jurisdiction but, in view of the likely deficit in information amongst those applying for a ABS licence, we consider that each applicant should be informed that there are a number of countries in which ABS will not be recognized and that there may therefore be restrictions on any proposed practice abroad. This would inform the applicant of any difficulties which may be experienced if the ABS intends to operate in other jurisdictions.

13. Should LDPs, Recognised Bodies and other similar firms have transitional arrangements into the wider ABS framework in the way we propose?

a. Is 12 months after the start of mainstream ABS sufficient time to allow this to happen?

Probably, but it is too early to state definitively what time period may be required. We should note that all solicitors firms are now recognized bodies. We assume that the LSB will not require them to apply for an ABS licence. This should be made explicit. Furthermore, we are not at all convinced that it is necessary for all LDPs to become ABS, surely the requirement that all solicitors' firms apply for recognition is sufficient to address any risk presented by those LDPs which have a non solicitor manager and the ABS regime should be targeted at the risks presented by external ownership or cross disciplinary practices? An LDP would surely fit better with the non-ABS model?

14. Should ABS licences be issued for indefinite periods?

a. Should the annual charging process be broadly cost reflective or a fixed fee?

The annual charging process should be broadly cost reflective, as with arrangements for non-ABS.

b. How should LAs ensure ABS are continuing to comply with their licence requirements?

LAs should have the power to conduct on site investigations as necessary. ABS will be subject to the requirements to self-report and other lawyers will also have obligations to report suspected serious misconduct if it is brought to their attention. We assume that there will be an equivalent annual

accountant's report requirement for ABS as for non-ABS. All of these things should provide information on ABS, as well as any notifications received from the OLC.

15. Do you agree with our approach to managing regulatory overlaps?

a. Is it desirable to have a framework approach to a MoU?

Yes. It is unlikely that all LAs will be able to agree to work with each other and with other ARs and regulators of other professions and other statutory regulators on the same terms and a framework arrangement will afford sufficient flexibility to address any differences in approach whilst providing a sensible level of consistency and certainty.

We would express our strong reservations about the likelihood of a workable MoU coming to pass in practice and we would advocate the preparation of a plan "B" for the event that it is not possible to reach a sensible and workable agreement. It seems to us rather a daunting task although that is no reason why it should not be attempted.

b. Do you think we have identified the right bodies to develop a MoU with?

Yes although we would suggest that the Competition Commission should usefully be considered as a potential body to be party to the MoU, particularly in light of the stated aim of the reforms to promote competition within the professions. It may also be appropriate to have discussions with Companies House as there may be instances where Companies House will become privy to company information relating to an ABS which would be of concern to the LAs.

c. Do you think we have identified the right issues to include?

Yes, with the addition of competition and anti competitive practices.