

Annex 3

SCREENING FORM

Date of Screening	April 2011 (Updated July 2011)
Assessor Name & Job Title	Andrew Hill, Senior Policy Officer
Policy/Function to be Assessed	<p>Barristers should be permitted to be managers/employees of Alternative Business Structures (ABSs) when Part V of the Legal Services Act 2007 is commenced ; and</p> <p>Barristers should be permitted to hold ownership interests in ABSs.</p>
Background and aim/purpose of policy	<p>The Legal Services Act 2007 (LSA 2007) establishes a new statutory regime for the regulation of persons or entities carrying out reserved legal activities and other activities. The LSA 2007 contains a number of 'Regulatory Objectives' which all regulators have to consider when setting or amending their professional conduct rules. The objectives are:</p> <ul style="list-style-type: none"> (a) protecting and promoting the public interest; (b) supporting the constitutional principle of the rule of law; (c) improving access to justice; (d) protecting and promoting the interests of consumers; (e) promoting competition in the provision of services; (f) encouraging an independent, strong, diverse and effective legal profession; (g) increasing public understanding of the citizen's legal rights and duties; (h) promoting and maintaining adherence to the professional principles. <p>One of the legislation's main purposes is to liberalise the legal services market for the benefit of consumers in terms of greater access to better, cheaper legal services, subject however to protecting the public interest and professional standards.</p> <p>In November 2009 the Board took the decision, amongst others, to allow barristers to:</p> <ul style="list-style-type: none"> (a) practise as managers of Recognised Bodies; and (b) hold an outside ownership interest in Recognised Bodies. <p>The effect of this was to allow the Bar to be managers of</p>

	<p>entities regulated by other Approved Regulators, which was the first step in liberalised modes of practise. The LSB have announced that they wish to see the first Licensed Bodies (ABSs for the purposes of this report) in operation by October 2011 and have approved licensing authority applications submitted by the SRA and CLC. ABSs will manifest themselves in a number of different forms and it's impossible to predict exactly how the market will look in the short to medium term following the commencement of Part V of the Act.</p> <p>In due course, those Recognised Bodies which have one or more non-lawyer managers will cease to be designated as a Recognised Body and will need to apply for a license issued by an approved Licensing Authority.</p> <p>In April 2011 the Bar Standards Board decided in principle to regulate Barrister only Entities (BoEs), Legal Disciplinary Practices (LDPs) and Alternatives Business Structures (ABSs). The Board decided that barristers should be permitted to practice as managers or employees of Alternative Business Structures (ABSs) regulated by other Approved Regulators when Part V of the Legal Services Act 2007 comes into force (it is anticipated that this will be in October 2011). The Board also decided that barristers will be permitted to hold ownership interests in Alternative Business Structures subject to the development of rules and guidance on managing any resulting conflicts of interest.</p> <p>In principle, permitting those barristers who wish to participate in entities regulated by other licensing authorities will promote the regulatory objectives and the BSB is not aware of any significant regulatory risks developing as a result of the earlier relaxations with respect to Recognised Bodies.</p>
Introduction	<p>Since the code amendments were introduced in March 2010, 38 barristers have become managers of Recognised Bodies. It is unclear from the records kept by the BSB exactly how many barristers are employed by Recognised Bodies (i.e. employed barristers who used to work in traditional firms that have subsequently applied for, and been designated as, LDPs).</p> <p>Of the 38 current barrister managers:</p> <ul style="list-style-type: none"> • 22 are white, 5 BME and 11 no information was available; • 30 are men and the remaining 8 are women; • None have a recorded disability; • 4 were called in the 1970s, 8 in the 1980s, 19 in the 1990s, and 7 in the 2000s. The oldest call date is November 1974 and the earliest is July 2004.

	<p>Two barristers have registered with the BSB as having an ownership interest in a Recognised Body that they do not themselves work in.</p> <p>An interim EIA was presented to the Board in November 2009 when it took the earlier decision on barrister participation in LDPs. Many of the issues below are similar to those already considered and this paper necessarily builds on the previous work, providing updates where possible.</p> <p>Given that it is impossible to predict exactly how ABSs will develop in the legal services market, and because the Board's earlier relaxations have only been in effect since March 2010, there is limited evidence to support the EIA. That said, we have information from the YouGov survey, responses to the Entity Regulation consultation paper, the Bar Barometer Report and equality and diversity statistics from the existing barrister managers of Recognised Bodies. The below is a narrative summary of the adverse and beneficial effects on race, gender, disability and age followed by a recommendation.</p>
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Barristers should be permitted to be owners/employees of ABSs from October 2011 and barristers should be permitted to have outside ownership interests in ABSs.

Race:

1. The YouGov survey confirmed that the most important aspects of practice to all barristers are the ability:
 - (a) To maintain autonomy and control over ones practice;
 - (b) To avoid conflicts of interest; and
 - (c) Of the Bar to remain a separate and independent legal profession.
2. There were however some interesting distinctions between the thoughts of non-white barristers and their white colleagues when it came to ABSs.

- (a) Non-white barristers placed greater importance on the ability to find new methods of distributing profits than their white colleagues (46% vs 29%);
 - (b) Non-white barristers were more interested in joining an ABS within the next five years than their white colleagues (45% vs 35%);
 - (c) Non-white barristers were more likely to prioritise the ability to raise capital than their white colleagues (45% vs 33%); and
 - (d) Non-white barristers placed more emphasis on partnership with non-barristers than their white colleagues (48% vs 35%).
3. The above data indicates that non-white barristers are more likely to join ABS and go into partnerships with non-barristers than their white colleagues. Perhaps this is unsurprising given that one of the predicted consequences of the liberalisation of the market is that there will be fewer providers but they will be larger in size (this is particularly true for publicly funded work where the LSC's stated policy is to contract with a smaller number of larger providers in each region). Because a higher percentage of non-white barristers are sole practitioners this contraction risks disproportionately affecting them and joining ABSs may be seen as a positive option in order to protect their professional future.
 4. Of the 38 barristers who are currently managers of LDPs, 22 are white, 5 come from BME backgrounds and no information was available on 11.
 5. There is other published data, which was referred to in the earlier EIA, which suggests non-whites have greater difficulty finding jobs and securing work due simply to their ethnic minority names when compared to their white colleagues. Arguably some non-white barristers may have missed out on instructions on this basis alone, and it could be another factor driving their greater emphasis towards ABSs.
 6. Whilst it is impossible to predict how the market will develop, it is nevertheless anticipated that big corporate entities will begin to offer legal services (e.g. Co-Op Law). It's arguable that these larger institutions may have more developed Equality and Diversity policies than a number of existing firms/chambers, and could therefore be a more attractive option for non-white barristers who may otherwise struggle for work and career progression.

Gender:

1. The YouGov survey provides limited information on difference in approach to ABSs by way of gender:
 - (a) Females place more importance on stability and financial security than their male colleagues (81% vs 72%). Arguably the opportunity to be manager or employee in an ABS provides a greater stability and financial security than self-employed practice.
 - (b) Perhaps surprisingly men were more interested in joining ABSs within the next five years than their female colleagues (39% vs 28%).

2. There were also variations in the replies from barristers with children and those without:
 - (a) Barristers with children placed slightly higher importance on working in partnership than the colleagues without children (40% vs 32%).
 - (b) Barristers with children were also slightly more interested in joining an ABS in the next five years (39% vs 32%).
3. Of the 38 barristers who are currently managers of Recognised Bodies, eight are females (percentage breakdown - 21% female and 79% male). The overall gender composition of the Bar in 2010 (self-employed and employed) was 65.6% male and 34.4% female. The limited data available on managers of Recognised Bodies suggests fewer females are taking advantage of the existing relaxations. However, given the overall figure is only 38 barristers these percentages only offer some degree of assistance.
4. It is well established that although there is gender parity when young people enter the profession, the percentage figures drop markedly as time goes on. In 2009/10, 68.5% of the self-employed Bar were men and 31.5% women. Over the same period, 53.8% of the employed Bar were men and 46.2% were women. These figures are perhaps not remarkable given the added flexibility that is available to employed barristers. ABSs arguably offer women barristers additional options when it comes to flexible working environments, and may work to ensure a greater number of females remain in the profession.

Disability:

1. Although the YouGov survey had a small baseline response from barristers with disabilities, those who did reply placed a greater emphasis on working with non-barristers and greater emphasis on the ability to raise capital compared to their non-disabled colleagues.
2. Further, and although not directly related to ABSs, disabled barristers placed more emphasis on expanding public access work than their colleagues (68% vs 56%).
3. In general, it is accepted that disabled barristers are disproportionately represented in the sole practitioner statistics. As with race, a contraction of the market into a smaller number of larger entities could adversely affect these individuals. On the other side of the coin, additional employment opportunities with new, more flexible, ABSs may prove attractive to disabled barristers.

Age:

1. The YouGov survey revealed a general trend that as time at the Bar increases so does the likelihood of barristers joining an ABS. 30% of barristers under five years call were interested in ABSs as opposed to 38% of their colleagues who had been at the Bar for more than 20 years.
2. This is perhaps not too surprising given the YBC has made it clear that a major attraction to the Bar for young people is the freedom and control self-employed practice provides. Older more experienced barristers are more likely to join ABSs as managers and it is therefore a more attractive option compared to their younger colleagues. Nevertheless 30% of young barristers is not an insignificant figure and it perhaps reflects the Young Bar's concern over adequate work supply through the traditional referral basis.

Recommendation:

1. The possible equality impacts associated with the proposed changes could be both negative and positive. However, the recommendation is that there are no compelling Equality and Diversity issues that prevent the changes from being endorsed.
2. The proposed changes are permitted under the LSA 2007 (indeed they are positively encouraged by the LSB), they are not radical and merely represent an extension of permissions that are already available to barrister with respect to Recognised Bodies, they support the regulatory objectives of the LSA 2007 and they do not pose a risk to the public interest.
3. Any adverse effects can be mitigated by conducting a thorough communications campaign and monitoring uptake.

Action Planning:

With respect to each of the protected areas mentioned above, the action planning for the future will concentrate upon:

1. An in-depth and comprehensive communication campaign about the changes, led by the Communications Team so that the profession is adequately prepared for the changes;
and
2. Monitoring the numbers of barristers who take advantage of the proposed code amendments.