

Alternative Business Structures LSB Forum

3rd November 2009

Some givens

- The SRA seeks to be a licensor of ABSs at the earliest available stage
- The SRA is working with the LSB and other regulators to deliver to the agreed timetable
- The SRA wishes to work with all stakeholders
 - to achieve consensus wherever possible
 - to ensure that all those involved are prepared to meet the challenges

Some reminders

- Key objectives of the ABS provisions in the Legal Services Act were the reduction of restrictions and the promotion of competition and choice
- The presumption is that liberalisation of the market will achieve those ends – regulatory restrictions need to be clearly justified
- The legal services sector is a regulated sector – asymmetry exists and consumer protections are required

Where has the SRA reached on ABSs?

- Consultation document issued in the spring, responses reported to SRA Board last month
- Some main conclusions reached, key areas for resolution identified
- Work with LSB and other regulators in hand to take matters forward
- Next consultation from LSB awaited

What conclusions has the SRA reached?



- The ABS framework should not add unnecessarily, if at all, to the minimum conditions required in the Act
- Protections for consumers using ABSs should be the same as for those using other kinds of law firms, except where the risks associated with ABSs are demonstrably and significantly different

What conclusions has the SRA reached?



- Regulators should not attempt to define ABS models, save for modelling purposes
- The focus should be on outcomes, appropriate supervision, and risk assessment, not upon restricting models, except where a particularly high risk to consumers is identified
- Further work is required in relation to Multi-Disciplinary Practices, which pose particular regulatory issues

What conclusions has the SRA reached?



- The current reserved/non-reserved legal activities regime is defective, and runs the risk of consumer confusion. Further work with the LSB and its consumer panel is required
- There should be no general prohibition on categories of owner or investor, but there should be a proper fitness to own test, differentiated according to level of ownership

What conclusions has the SRA reached?



- Further work is required to determine how the “access to justice” criterion should be applied – the SRA’s provisional view is that the presumption should be that opening the market will improve it, unless demonstrated otherwise
- There should be continual monitoring of the E&D impacts of ABSs

What conclusions has the SRA reached?



- There should be requirements to ensure that suitably qualified and empowered people are employed as Heads of Legal Practice in ABSs
- Multi-disciplinary practices should be permitted without ring-fencing
- Insurance and Compensation Fund arrangements for ABSs should provide the same protections as other law firms

What conclusions has the SRA reached?



- There should be agreed descriptions across the sector to promote consumer clarity
- More work is required on conflict between regulators in relation to Multi-Disciplinary Practices

Skilling up



- The SRA is employing new staff with broader regulatory experience
- The SRA has contracts with a major law firm and an accountancy firm to provide additional skills in the rapid development of a new regulatory regime suitable for ABSs

Some history

- The regulation of solicitors is based upon the notion of the accountability of individual professionals working in a relatively homogeneous environment, not upon the quality assurance of legal services suppliers
- The regulation of solicitors is based upon core principles, but with an extensive elaboration of those principles through rules
- The historic focus has been on compliance, not outcomes

The need for change

- The current regime is ill-suited to the regulation of corporate entities (even without ABSs)
- A more flexible, outcomes focussed approach is required

All of this requires

- A new approach to monitoring and supervision
- A new approach to compliance (Code of Conduct and methods of enforcement)

The SRA has



- Established a Corporate Regulation Project to pilot new approaches to firm based regulation (piloting work to begin early in 2010)
- Published a discussion document on moving to full Principles-Based Regulation

Principles, outcomes, rules – an old debate



- Circumcision, the treatment of withered hands, and rescuing sheep from pits (see Matthew 12:10)
- Client care letters, unclaimed client balances, referral fees (see SRA Code of Conduct Rules 2 and 9)

(We're all in favour of principles-based regulation, but are we agreed on what it means?)

Competing risks

- ABSs offer the ideal opportunity to start as you mean to go on – outcomes-focussed regulation
- If you build the limitations of the past into the new model you may never get there
- There are dangers to consumers in a move to full Principles Based Regulation if the regulated community and the regulator are not fully prepared
- We might delay the major benefits of ABSs if we overload the launch

We need to determine

- What we can deliver within the agreed ABS timetable
- What the competing risks are of the different approaches

We need to be realistic

- There will be risks whichever approach is adopted
- We need to focus on where the maximum benefits lie
- We will only learn through implementation – the lessons from the introduction of LDPs are limited, and it is foolish for a regulator to attempt to second-guess the market

A successful outcome?

- Increased competition
- Maintained standards of consumer protection
- Buy-in from members of the profession
- Cost-effective transition
- Outcomes-focused supervision
- Risks of transition mitigated through the manner of delivery and the new approach to regulation