

# Alternative business structures: approaches to licensing

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Impact Assessment (IA) of the approach to a licensing  
framework for Alternative Business Structures (ABS)

## Introduction

This IA details the Legal Services Board's (**LSB**) guidance for Licensing Authorities (**LAs**) in respect to when Licensing Authorities make rules. As such this guidance does not have any direct administration burden or policy cost impacts. It is envisaged that at a future date the Legal Services Board (LSB) will issue another impact assessment focusing on the overall impact of the establishment of ABS on the legal services market.

This IA sets out the main issues that the LSB has considered in its proposals for a new licensing framework for ABS. ABS have fewer restrictions on ownership, financing and service delivery than many current legal services providers.

Throughout the development of its proposals, the LSB has held discussions with key stakeholder and has pre-consulted on the more general issues in its discussion paper on ABS ("*Wider Access, Better Value, Strong Protection*"). These stakeholders include:

- Consumer organisations;
- Regulatory bodies;
- Other professional representative bodies;
- Legal services providers; and
- 'Special bodies' (within the meaning of section 106(1) of the Legal Services Act 2007 (**LSA 2007**)).

The LSB has identified that the following sectors and groups will be affected by its proposals:

- Consumers of any legal services;
- Potential consumers, both individuals and businesses, who are currently not accessing services;
- Members of the legal professions that undertake reserved legal activities;
- Providers of unreserved legal activities;
- Legal professional and regulatory bodies that regulate legal activities;
- 'Special bodies' that offer legal advice and purchase legal services;
- Potential investors in ABS;
- Providers of legal services; and
- The broader public (in the sense that confidence in the legal profession supports the rule of law).

On 18 November 2009 the Legal Services Board issued a consultation paper "Alternative business structures: approaches to licensing". This paper built on the discussion document on ABS issued in May 2009. The November consultation document drew together the LSB's thinking on a number of policy areas that will inform the guidance that LSB issues on the content of licensing authorities (LAs) rules.

The November consultation document identified and discussed the following policy areas:

- A new approach to regulation - structure of licensing framework
- Ownership tests
- Indemnity and compensation
- Reserved and unreserved legal activities
- LA enforcement powers and financial penalties
- Access to justice
- Appellate bodies
- Special bodies
- Head of Legal Practice (**HoLP**) and Head of Finance and Administration (**HoFA**)
- Complaint handling for ABS
- Diversity
- International issues
- Legal Disciplinary Practices (**LDP**s), Recognised Bodies and other similar entities
- Other issues
- Regulatory overlaps

We received 46 responses to the consultation. All non-confidential responses have been published on the LSB's website.

Published alongside this document is:

- a document summarising the consultation responses and the LSB's response to those responses and;
- a document listing the LSB's guidance to LAs on the content of their licensing rules.

The LSB expects LAs to take an outcomes-based approach to regulating ABS which focuses on the outcomes that it expects will support the regulatory objectives. It is proposed that the LSB will set out a framework of core principles and outcomes that LAs will be required to adopt. Furthermore, the LSB proposes that LAs take a risk-based approach to regulation, both at the time of assessing an application for ABS status and in overseeing legal service providers that subsequently appear to pose the highest risk. These approaches represent a break from the past for some approved regulators (**ARs**) as they propose a much stronger regulatory focus on the legal services provider as an entity – the systems and activities of the legal service provider as an economic unit – rather than the individual behaviour of lawyers within it.

### **What is the problem under consideration? Why is intervention necessary?**

The impact of ABS has already been considered at chapter 5 of the full IA of the draft Legal Services Bill. The LSB permits ABS, and a licensing regime is required by the LSA 2007 – a 'do nothing' option is not possible. In this context intervention is necessary as it is the primary way to facilitate the establishment of ABS in the provision of legal services. Specifically, it is necessary to outline in detail the guidance for the licensing framework that will be implemented as part of the new approach that will allow Licensing Authorities to licence a particular type of legal

service provider known as ABS. Intervention is necessary to ensure that the licensing regime for ABS is robust and designed to remove many of the barriers in relation to non-lawyers owning organisations providing legal services and provide new opportunities for innovation, access to justice and reshaping of the legal service market.

This IA analyses some of the more specific impacts of the options considered for creating this new licensing framework.

### **What are the policy objectives and the intended effects?**

Other than the general approach to licensing, outlined above, the following implementation issues were considered key to a successful licensing framework and most meriting guidance:

1. Creating a 'fitness to own' test.
2. Ensuring adequate indemnity and compensation arrangements.
3. Compensation funds – whether it is appropriate to require them and how they could work in ABS providing a range of different types of advice.
4. Creating an appellate body to hear appeals against LA decisions.
5. Adopting an approach to improving access to justice when licensing.
6. Developing a licensing framework for special bodies.
7. Developing an approach to managing regulatory overlaps.
8. Developing an approach for complaints handling for ABS.
9. Encouraging diversity through ABS.
10. Developing an approach for the treatment of reserved and non-reserved legal activities.
11. Working out how Legal Disciplinary Practices should fit into the ABS regime.
12. Working out how long a licence should last and what its cost should be.

## **General Considerations**

**What policy options have been considered? Please justify any preferred option**

### ***Option 1: Do nothing***

The LSB permits ABS and a licensing regime is required by the LSA 2007 – a 'do nothing' option is not possible.

### ***Option 2: Create a rules based licensing framework***

Creating a rules based licensing framework in a situation makes less likely the possibility of focussing resources on those legal services providers that pose the greatest risk to the regulatory objectives. The regulatory burden, however, may be so great as to stifle adoption of ABS.

The current regulation of legal services is not zero risk, firms fail and fraud occurs. However, it does provide protection for consumers. If ABS were not to take a similar approach it would cause market distortion.

***Option 3: Maximise deregulatory aspects of ABS, and substitute consumer information for consumer protection***

The intent behind ABS is to remove unnecessary barriers to competition and to allow new ownership models, financing arrangements and service delivery options for legal services providers who wish to adopt an ABS form. ABS therefore constitutes a limited form of deregulation which aims to institute a framework that will ensure consumers' interest are taken account are taken into account. One option would be to increase consumer education about the general risks in both ABS and non-ABS contexts and allow them to make an informed choice. However, given the information asymmetry inherent in the lawyer-consumer relationship, it is doubtful that substituting market transparency for regulatory intervention will best bring about the desired outcome of strong consumer protection.

***Option 4: Allow ARs to modify their existing regulatory arrangements to accommodate the new licensing regime***

It would be possible to allow ARs to continue to regulate in varied ways and to extend their different styles of regulation to the new ABS licensing regime. However, the policy does not guarantee that ARs will adopt an outcomes-focused, risk-based approach to regulation.

***Option 5: Adopt an outcomes focussed approach***

The LSB's preferred approach is to propose an outcomes-focused, risk-based approach to regulation. Resources should be focused on the riskiest ABSs. This does not undermine regulatory competition since the AR's manner of enforcement against, and relationship with, its regulated community will continue to be varied. The LSB believes that transparency is key to allowing consumers to make an informed choice (and that allowing for a range of quality of legal advice improves access to justice), but that this has to be supplemented by regulatory intervention – LAs must ensure consumer protection through the fitness to own test, the Head of Legal Practice (**HoLP**) and Head of Finance and Administration (**HoFA**) adequate compensation and indemnification arrangements, clear processes for complaints handling, and strong enforcement powers. We consider this is consistent with our responsibility under LSA to allow ABS and deliver the regulatory objectives.

## Specific considerations

In the consultation document we outline a set of proposed outcomes that would apply to all LAs. The considerations for each set of outcomes are outlined below. It is not possible to fully quantify, in any meaningful way, aspects of the foregoing options due to the difficulty of ascertaining information concerning specific costs and benefits. The options outlined in this IA will not have any direct admin burden or policy cost impacts. However, the potential impact of establishing ABS on the legal services market will be more fully detailed in a future IA.

## Creating a 'fitness to own' test

### *Options considered*

#### Option 1: Do nothing

Due to the requirements of the LSA 2007, this is not possible.

Option 2: Create a uniform test for non-authorized persons (as opposed to a variety of tests for non-authorized persons which would be similar to the existing situation for authorized persons) using the experience of other regulators with similar tests

#### Benefits

**Economic and Social:** There is clarity in having one standard of fitness and propriety for relevant non-authorized person owners. One standard removes the risk of 'regulatory shopping' for the lowest standard of 'fitness and propriety'. This would be a test tailored to the legal services market and its current segmentation and that should benefit consumers and suppliers by allowing the legal services market to work better.

#### Costs

**Economic and Social:** The uniform test for non-authorized persons may necessitate a similar uniform test for authorized persons which would result in extra cost.

## Ensuring adequate indemnity and compensation arrangements

What the requirements for Professional Indemnity Insurance (“**PII**”) will be when an ABS undertakes a range of activities. (Note that this will be considered during the course of 2010 in more detail by the LSB)

### *Options considered*

#### *Option 1: Do nothing*

Due to the requirements of the LSA 2007, this is not possible.

#### *Option 2: Reduce current minimum terms for PII*

##### Benefits

**Economic and social:** This measure is deregulatory in nature. Reducing current minimum terms for PII may provide a significant benefit to law firms through reduced cost of insurance.

##### Costs

**Economic and social:** Ultimately, these costs will be borne – at least in part – by consumers of legal services and that cost will be reduced; statistics from the ABI suggest that many claims made fall well below the level of minimum insurance that is currently required.

#### *Option 3: Consumer information as a form of consumer protection*

##### Benefits

**Economic and social:** This places the risk onto a well-informed consumer. It may thereby improve access to justice by enabling a variety of quality of legal services (where regulation represents a minimum standard of quality assurance).

##### Costs

**Economic and social:** It is uncertain that relying on consumer information on such a complex issue will be effective. It is likely to be difficult to educate consumers about the regulatory framework and what protection there is.

#### *Option 4: Allow for more variance to minimum terms of insurance based on type and value of work undertaken*

##### Benefits

**Economic and social:** The cost of insuring against certain risks may be better managed through tailoring insurance terms. Increased flexibility in the insurance market would allow ABS and insurers to better meet the actual risk posed to consumers.

##### Costs

**Economic and social:** It would be difficult to ensure that consumers were not adversely affected by variable insurance terms. Currently all solicitor’s firms are required to carry protection that appears to be more than sufficient to cover detriment. Consumers would need to be better informed about the risks posed by different levels and terms of insurance.

## Compensation funds – whether it is appropriate to require them and how they could work in ABS providing a range of different types of advice

(Note that this will be considered during the course of 2010 in more detail by the LSB)

### *Options considered*

#### Option 1: Do nothing

Due to the requirements of the LSA 2007, this is not possible.

#### Option 2: Develop a single compensation fund paid for from the ABS licence fee

##### Benefits

**Economic and social:** This would realise cost savings between the ARs. It may also be possible to combine the ABS compensation fund with non-ABS compensation funds, where appropriate.

##### Costs

**Economic and social:** This approach could represent a significant barrier to new applicants wishing to be designated as an AR, unless they were allowed to join the compensation fund.

#### Option 3: Allow LAs to extend the compensation arrangements they currently have as ARs

##### Benefits

**Economic and social:** Each AR already has compensation arrangements in place so the establishment and running cost would be lower.

##### Costs

**Economic and social:** The current contributors to the compensation fund may see ABS as presenting different risks than traditional firms.

#### Option 4: Devise alternative ways of providing an appropriate level of consumer protection

##### Benefits

**Economic and social:** The compensation fund represents a considerable cost to authorised persons and ultimately the consumer which may be disproportionate to the benefit. It may be possible to remove that cost and better inform the consumer as to the risks they face

##### Costs

**Economic and social:** The compensation fund protects those who are not protected by insurance and the cost to the reputation of the legal profession may be significantly impaired if the compensation fund is altered or eradicated.



## Creating an appellate body to hear appeals against LA decisions

(Note that this will be considered during the course of 2010 in more detail by the LSB)

### *Options considered*

#### Option 1: Do nothing

Due to the requirements of the LSA 2007, this is not possible.

Option 2: Extend the remit of the Solicitors Disciplinary Tribunal (**SDT**) and the Disciplinary and Appeals Committee (**DAC**) of the Council for Licensed Conveyancers.

#### Benefits

**Economic and social:** The SDT and DAC already have experience in dealing with some of these issues, although their focus is primarily individual conduct matters. There would be lower establishment costs as they are already in existence.

#### Costs

**Economic and social:** There would not be a single source of ABS related decisions leading, potentially to difference in interpretation of rules. Issues about independence would remain especially if LSB were to become a direct licensor. Running costs would continue to be high. It would add new functions to these bodies in areas where they may not have had prior experience.

Option 3: Create (or nominate) a single body to hear licensing application appeals only (not conduct or rule transgressions).

#### Benefits

**Economic and social:** Such a body would be suitable to hear appeals should LSB become a licensor. It would be able to focus on application appeals and adopt suitable systems. Running costs may be able to be lower and there may be scope to join with other regulatory appeal functions from other areas of regulation.

#### Costs

**Economic and social:** Establishment cost may be high. There may not be a critical mass of cases to warrant a standalone body. There would be lower ability to build on current systems and knowledge.

Option 4: Create (or nominate) a single body to hear all ABS related appeals.

#### Benefits

**Economic and social:** A single body could ensure that all ABS decisions were treated in a consistent manner and precedents were well managed. It would be an appropriate body to hear LSB appeals. Running costs may be able to be lower and there may be scope to join with other regulatory appeal functions from other areas of regulation.

#### Costs

**Economic and social:** Establishment cost may be high. Consistency between individual conduct issues and ABS issues would not be addressed. There would be lower ability to build on current systems and knowledge.

## Option 5: Establish a new body under aegis of the First-tier Tribunal

### Benefits

**Economic:** This would provide a single body for hearing appeals from licensable bodies about the decisions of LAs. This would mean costs would not be duplicated and ensure a consistency of approach in dealing with LAs regulated by the LSB and the LSB as a LA. The First-tier Tribunal is currently adding new jurisdictions to its work.

**Social:** The breadth and depth of experience of the new tribunal structure will bring a high degree of scrutiny to the appeals process. The First-tier Tribunal consists of highly experienced senior members of the judiciary whose views on appeals will support the work of LAs. It will also ensure that the scheme is seen as neutral in the eyes of LAs with no links to existing bodies.

### Costs

**Economic** Setting up a new appeal mechanism will take time. It is likely that there will be more set up costs for this mechanism than for adapting existing mechanisms.

**Social:** Dealing with a new appeal mechanism will require the development of new relationships.

# Adopting an approach to improving access to justice when licensing

## *Options considered*

### Option 1: Do nothing

#### Benefits

**Economic and Social:** This allows LAs to have the maximum flexibility in approach to dealing with the provision in the legislation and reducing the costs of compliance.

#### Costs

**Economic and Social:** Providing no structure to the approach to be taken in this area leads to disparate and conflicting approaches which stifle the development of ABS and may prevent an improvement in access to justice.

### Option 2: Take a prescriptive rules based approach to dealing with the requirement

#### Benefits

**Economic and Social:** This ensures that there is will be a consistent approach to the requirement

#### Costs

**Economic and Social:** Taking a prescriptive approach will increase the costs of compliance for the LSB and LAs and will reduce the scope for innovation.

### Option 3: Require applicants for licences to anticipate how they will improve access to justice and require LAs to include this information in their annual reports

#### Benefits

**Economic and Social:** This provides some structure to the approach that LAs should take but ensures that the costs of compliance are kept to a minimum.

#### Costs

**Economic and Social:** It will only be possible to view the impact of this approach on improving access to justice some time after its implementation. This is mitigated by the requirement to collect information and include it in annual reports.

## Developing a licensing framework for special bodies

(Note that this will be considered during the course of 2010 in more detail by the LSB)

### *Options considered*

Option 1: Do nothing – transitional protection remains in place and special bodies remain outside the scope of regulation

#### Benefits

**Economic:** Special bodies, which include not for profit advice agencies with limited resources, would not be subject to the potentially burdensome costs of regulation.

**Social:** In responses to the first ABS consultation, it was generally regarded that risks to consumers who access legal services from special bodies are low.

#### Costs

**Economic and Social:** The term “Transitional protection for non-commercial bodies” used in section 23 of the Act suggests that this was not intended to be a permanent arrangement and that special bodies would at the appropriate time, come within the scope of regulation.

Furthermore, if special bodies remain unregulated, consumers of their services would not receive the same protections and level of redress as those using mainstream ABS. Complaints about special bodies would be outside the scope of the OLC, putting consumers of these services at a significant disadvantage if things go wrong.

Option 2: Transitional protection for special bodies ends at the same time that licensing for mainstream ABS begins

#### Benefits

**Economic and Social:** Consumers of services provided by special bodies would receive the same protections and levels of redress as consumers of mainstream ABS from the beginning of the ABS licensing regime.

#### Costs

**Economic:** Due to the complexity of introducing regulation to special bodies, LAs may be unable to successfully adapt the licensing regime to the level of risk posed by these bodies. Special bodies may therefore be subject to the same level of regulation as mainstream ABS, and its associated costs, which are likely to be inappropriate and excessively burdensome.

**Social:** Would not allow time for LAs to develop a risk based approach to licensing of special bodies. In the absence of a competent LA for Special Bodies, the LSB may have to become a direct licensor.

Some small organisations may lack the resources to ensure regulatory compliance or may be ill prepared due to an insufficient lead in time for the introduction of regulation.

Option 3: Transitional arrangements should be removed as soon as reasonably practicable, probably 12 months after mainstream ABS starts

### Benefits

**Economic:** Regulation that is proportionate to the specific risks posed and is cost reflective would avoid placing excessive burdens on special bodies.

**Social:** Allows time for engagement between the LSB, ARs and special bodies to make the right decisions on how we introduce regulation. LAs will be in a better position to adapt regulation and enforcement of ABS to appropriate levels, based on evidence of risk to consumers, and develop an appropriate set of minimum requirements. Also allows time for special bodies and those who represent them to develop understanding of the regulatory regime to ensure the successful introduction of regulation. This may mean that in making their licensing applications, a special body will exercise its right to request modification of the licensing rules or for the ownership test not to apply.

### Costs

**Economic and Social:** There will be a period of time where consumers of services provided by special bodies will not receive the same protections as those of mainstream ABS and consumers may be unable to differentiate between regulated and unregulated services.

12 months may not be long enough for LAs to successfully adapt regulation to meet the specific risks of special bodies, nor may it be a sufficient period of time for special bodies to prepare for the introduction of regulation by assessing what they need to do to comply with ABS requirements.

## Developing an approach to managing regulatory overlaps

### *Options considered*

#### Option 1: Do nothing

##### Benefits

**Economic and social:** Each AR may have agreements with some other regulatory agencies, primarily around information sharing. The scope of these agreements could be expanded to include those organisations regulated as ABS. This would require little initial investment.

##### Costs

**Economic and social:** The current arrangements are likely not to include treatment of multiple entity regulators – additional agreements would be required (see option 2). The ongoing cost is likely to be higher as more combinations of regulated entity are likely to emerge requiring increasing complexity of agreement. From a regulated entity's point of view this is likely to appear as a very complex maze.

#### Option 2: Develop bilateral memoranda of understanding

##### Benefits

**Economic and social:** In principle, the idea of developing memoranda of understanding is designed to decrease the impact of double (or multiple) regulatory burdens by ensuring that regulatory have formal arrangements in place to resolve disputes.

##### Costs

**Economic and social:** It takes time to develop memoranda of understanding and there would be a lot of administrative cost in liaising between multiple regulatory bodies, especially in the context of multidisciplinary practices. From a regulated entity's point of view this is likely to appear as a very complex maze.

#### Option 3: Develop a framework memorandum of understanding

##### Benefits

**Economic and social:** In order to decrease the impact of double (or multiple) regulatory burdens, and to decrease administrative costs, it may be possible to have a single framework memorandum of understanding which regulatory bodies sign up to. This should be cheaper and a more efficient way of managing such overlaps than having multiple bipartite memoranda of understanding.

##### Costs

**Economic and social:** It takes time to develop a framework memorandum of understanding and there would be a lot of administrative cost in liaising between multiple regulatory bodies, especially in the context of multidisciplinary practices.

## Developing an approach for complaints handling for ABS

### *Options considered*

Option 1: Do nothing – no guidance on ABS complaints handling

#### Benefits

**Economic and Social:** Individual ABS would be free to design their own complaint handling systems which meet the needs of their particular business model.

#### Costs

**Economic and Social:** Consumers of ABS would not be afforded the same protections as consumers of non-ABS.

Option 2: All service complaints relating to ABS go to the OLC

#### Benefits

**Economic:** ABS complaints are handled in the most effective way and do not need to be arbitrarily split off, reducing the risk of ‘double-handling’ of complaints.

**Social:** Consumers have one point of contact for all service complaints relating to an ABS and are afforded the same protections as consumers from non-ABS providers. From a consumer information perspective, all consumers of legal services will be directed to the same place if they need to complain about the service they have received.

Referral of complaints to other bodies is done in a way that minimises inconvenience for consumers as the OLC will ensure that complaints are directed to the most appropriate body.

#### Costs

**Economic:** The number of complaints going to the OLC could increase with the introduction of ABS. The resource costs of liaising with other bodies could also be high.

**Social:** For multidisciplinary ABS, there is a risk that this system may conflict with the requirements of other regulators. There is also a risk that where legal services are not ring-fenced, the OLC may receive disproportionate numbers of non-legal complaints or may not be the most appropriate body to handle complaints of this nature. An individual ABS may also object to all complaints going to the OLC if the majority of its services are non-legal. However, this could be avoided by the ABS ring-fencing its legal services.

Option 3: Only complaints about legal services go to the OLC, no guidance on handling of complaints relating to non-legal services.

#### Benefits

**Economic:** This enables the OLC to focus resources on complaints about legal services.

**Social:** This puts emphasis on resolving complaints at the first tier level and allows for ABS that may already have sophisticated complaint management systems to continue with their existing systems for complaints about non-legal services.

#### Costs

**Economic and Social:** This is likely to be confusing to consumers, who may have to falsely split up complaints where they relate to other professionals within the ABS and direct them as appropriate. In a multidisciplinary model, consumers may be dealing with several different professionals on the same instruction and may not be able to distinguish which aspects are strictly legal services. A high level of compliance in terms of consumer information is therefore required of ABS to ensure that consumers understand how they can complain. This approach would also mean that consumers of ABS services would not be afforded the same protections as consumers of non-ABS services. It also goes against the intention in the LSA that there will be one body handling all complaints about legal services providers.

Option 4: Only complaints about legal services go to the OLC, ABS required to ensure that non-legal complaints are handled adequately and filtered to the appropriate body where necessary.

#### Benefits

**Economic and Social:** As with option 3, this enables the OLC to focus resources on complaints about legal services and responsibility is placed on the ABS. ABS are able to design their own complain management processes for non-legal complaints in a way that suits each business model.

#### Costs

**Economic and Social:** As option 3, this is likely to be confusing for consumers and requires a high level of compliance from ABS to ensure that non-legal complaints are handled adequately. Furthermore, ABS may not direct consumers to the right place.

Consumers may still complain to the OLC about non-legal services which the OLC may not be in a position to handle. This approach also goes against the intention in the LSA that there will be one body handling all complaints about legal services providers.



## Encouraging diversity through ABS

### *Options considered*

#### Option 1: Do nothing

Due to the requirements of the LSA 2007, this is not possible.

Option 2: Require licensing rules to compel a licensed body to publish data on diversity (with the expectation that LAs will encourage the publication of data on diversity for larger ABS)

#### Benefits

**Economic and Social:** This may increase public confidence and in turn an increase in service users to a licensed body. The increase in public confidence from a diverse profession may also lead to improvements in business reputation and also more service users. The increase in transparency of diversity data may further reveal gaps in the workforce. As a result, recruitment processes of licensed bodies may improve to allow for fair access for all to entry into legal profession and progression/retention of diverse groups to senior levels. Increase in transparency of diversity data may also improve working conditions for existing employees - such a measure may encourage a culture change to profession by encouraging a more diverse workforce.

#### Costs

**Economic and Social:** This would require an increase in resourcing to gather necessary diversity data if not readily available. There is also potential damage to reputation of a service provider if its workforce is not diverse.

Option 3: No requirement for licensing rules to compel a licensed body to publish data on diversity

#### Benefits

**Economic and Social:** There would be less of a resource burden on licensed bodies to produce and gather diversity data. The LSB may introduce requirements at a later date when it has carried out further research

#### Costs

**Economic and Social:** A lack of information generally may restrict what further action the LSB can take.

## Developing an approach for the treatment of reserved and non-reserved legal activities

(Note that this will be considered during the course of 2010 in more detail by the LSB)

### *Options considered*

Following the issues raised in our consultation on the guidance for licensing rules, this area will be investigated in greater detail as part of LSB's 2010/2011 proposed business plan.

Option 1: Do nothing - maintain existing approach to reserved and non-reserved legal activities within an ABS context

#### Benefits

**Economic and Social:** This continues the current approach that is understood by legal practitioners and ensures that all legal services provided by solicitors are regulated.

#### Costs

**Economic and Social:** This continues the uncertainty as to current boundaries that exist. Different rules apply for different LAs. The potential for high entry cost for current providers of non-reserved legal activities who extend their offering to include reserved legal activities.

Option 2: regulate additional areas of advice in ABS compared to non-ABS

#### Benefits

**Economic and Social:** This increases consumer protection.

#### Costs

**Economic and Social:** However, it creates an un-level playing field between ABS and non-ABS and increases regulation in the absence of evidence that this is necessary.

# Working out how Legal Disciplinary Practices (“LDPs”) should fit into the ABS regime

## *Options considered*

### Option 1: Do nothing

Due to the requirements of the LSA 2007, this is not possible.

### Option 2: Force LDPs to join the ABS regime from “Day 1”

#### Benefits

**Economic and Social:** This provides a clearer basis for all legal service providers who have some element of external ownership and clarity of when and how LDPs will be regulated. It also provides consistency between LDP regulation and ABS regulation. Regulatory power would then stem from the LSA 2007.

#### Costs

**Economic and Social:** LDPs would be required to apply for a licence to become ABS. Current regulations for LDPs would be different than the new regulations for ABS.

### Option 3: Keep the LDP regime running in parallel with the ABS regime

#### Benefits

**Economic and Social:** LDPs would be allowed to continue within their current regulatory framework. LDPs would also continue to be treated the same as traditional law firms.

#### Costs

**Economic and Social:** Some firms with non-lawyer ownership would be treated differently to others. Moreover regulatory power would stem from a range of statutes. There would be little consistency between ABS and LDPs.

### Option 4: Allow a transitional period for LDPs

#### Benefits

**Economic and Social:** This allows LDPs to choose their own date for becoming an ABS whilst maintaining current consumer protection. It also allows consistency of regulation between LDPs and ABS.

#### Costs

**Economic and Social:** Some firms with non-lawyer ownership would be treated differently to others.

## Working out how long a licence should last and what its cost should be

### *Options considered*

#### Option 1: Do nothing

Due to the requirements of the LSA 2007, this is not possible.

#### Option 2: Have an licence renewal process annually

##### Benefits

**Economic and Social:** This would provide an annual point at which regulators could require information; it ensures that they are more likely to receive the information they require to judge risk.

##### Costs

**Economic and Social:** It leads to high compliance costs for ABS. There would be no clarity on whether a licence would be granted for longer periods and it may lead to reluctance to invest from potential investors.

#### Option 3: Have an annual fee, but a permanent licence (subject to material change conditions)

##### Benefits

**Economic and Social:** This would lead to lower compliance costs as ABS would not need to go through an application process each year. ABS would have surety of their ability to continue to trade, lowering risk for investors and uncertainty for consumers. ABS could also be closed in a more orderly fashion.

##### Costs

**Economic and Social:** There is potential for difficulty in providing information to regulatory bodies in a timely manner – this could be mitigated by appropriate licence conditions and sanctions.

## Overall Impact

### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

This policy may be reviewed once it has been used in practice but it is not expected to start until mid 2011 in any event.

#### ***Annual costs***

**One-off:** £ significant and variable for each AR. For ARs, the indemnity and compensation arrangements may be a relatively significant one off expense as might the adoption of a new approach to appeals.

For licensable bodies, there will be a one-off cost in order to apply for a licence.

**Average Annual Cost (excluding one-off):** £ significant and variable for each AR.

For licensable bodies, in particular, the fitness to own test may represent a considerable ongoing regulatory burden.

#### ***Annual benefits***

**One-off:** £ significant and variable for each AR. The regulated community may increase which will result in additional income for the AR.

The benefits for ABS may be very significant; the increased flexibility in ownership and service delivery options could translate to large savings which, in a competitive market, may be passed on to the consumer.

**Average Annual Benefit:** £ significant and variable for each AR. The regulated community may increase which will result in additional annual income for the AR.

The benefits for ABS may be very significant; the increased flexibility in ownership and service delivery options could translate to large savings which in a competitive market may be passed on to the consumer.

### ***What is the geographic coverage of the policy/option?***

England and Wales.

### ***On what date will the policy be implemented?***

It is expected that this policy will be implemented in mid-2011.

### ***Which organisation will enforce the policy?***

The ARs who apply to become LAs pursuant to schedule 10 to the LSA 2007 will enforce the policy. The LSB has oversight of those bodies.

***Does enforcement comply with Hampton principles?***

Insofar as the LSB is recommending the policy, yes.

***Will implementation go beyond minimum EU requirements?***

Yes. EU requirements do not require the regulatory framework set out in the LSA 2007.

***What is the value of the proposed offsetting measure per year?***

Nil.

***What is the value of changes in greenhouse gas emissions?***

Nil.

***Will the proposal have a significant impact on competition?***

It is expected that the proposal will have a significant beneficial impact on competition.

***Annual cost (£-£) per organisation (excluding on-off)***

The costs of this policy are expected to add to the overall cost of compliance by ARs.

The regulatory compliance costs of legal service providers will also need to be taken into account (see below):

**Micro:** small **Small:** small **Medium:** medium **Large:** large

Special bodies will be subject to a more proportionate licensing framework (as may certain forms of LDP).

**Are any of these organisations exempt?** Yes – adopting an ABS form is optional.

***Evidence Base***

In shaping our proposals, we have made an initial assessment of the impact we think is likely on relevant ARs, on relevant authorised persons and legal services providers, on the wider regulated community of authorised persons and on consumers. We reiterate that our impact assessment is provisional and we invite comments on its substance.

***Regulatory impact on relevant ARs***

Any AR may apply to become a LA. Currently, the Solicitors Regulation Authority and Council for Licensed Conveyancers (as regulators of LDPs) have expressed a desire to become LAs.

### ***Consumer impact***

The benefit for consumers is that it will increase consumer choice as service delivery combinations are increased and may result in cost savings as new financing methods are taken advantage of (which may, for example, lead to new methods of injecting capital to allow for realisation of economies of scale).

### ***Regulatory impact on authorised persons***

The impact will vary depending on which authorised persons choose to adopt ABS; it may be that those who adopt ABS obtain a competitive advantage compared to non-ABS firms.

### ***Small Firms Impact Test***

The LSB expects the proposed policy to have a positive effect on small firms. Currently many smaller firms have been impacted by the recession, and arguably ABS will provide those firms with new methods of financing. LAs will be required to show that access to justice is improved.

### ***Competition***

Competitive markets are the most effective vehicles for generating economic wealth and in ensuring allocative efficiency. Well functioning, competitive markets operate best when they are fully contestable and when barriers to both entry and exit are low, providing incentives to innovate and deliver services at efficient prices. In this context, consumers are beneficiaries when engaging in competitive markets, as well as the suppliers of goods and services whose input costs are lowered, thus increasing the scope of their activities. In March 2001, the Office of Fair Trading identified a number of rules of the legal professions that were potentially unduly restrictive and that may have negative implications for consumers by affecting the quality and price of legal services. ABS seeks to remove some of those barriers. The aim of the licensing framework is to put consumers at the heart of regulation, and permitting the supply of legal services to better reflect consumer demand will improve competition.

### ***Legal Aid***

The proposed policy is anticipated to reduce the burden on legal aid by increasing the number of service options and price models for legal services, which will enable consumers with fewer means to access more affordable services.

### ***Race/Disability/Gender equalities***

ABS may allow different career paths and practices to emerge that may encourage diversity. Demand for diversity will be a constant factor in the modern workplace, so innovative ABS providers may have even greater incentives to operate in creative ways to recruit and retain a diverse workforce. We will expect LAs to monitor the diversity of those working in ABSs closely as part of our shared wider diversity strategy to increase the transparency of the legal services profession.

### ***Human Rights***

The proposed policy does not engage rights or freedoms under the Human Rights Act 1998 and the European Convention on Human Rights.

### ***Rural Proofing***

The LSB's policy is not expected to have a specific impact on rural areas. Currently many rural firms have been impacted by the recession, and arguably ABS will provide those firms with new methods of financing.

**There is no impact expected on sustainability, carbon emissions, environment and health.**