

Response: Consultation paper on draft guidance to licensing authorities on the content of licensing rules

1 Introduction

- 1.1 A seminar was held at the offices of Bevan Brittan LLP on 11 February 2010. The subject of the seminar was Legal Services Regulation and the seminar was primarily attended by members of Local Authority legal teams.
- 1.2 The seminar included a talk by Mr Chris Kenny, Chief Executive of the Legal Services Board on Alternative Business Structures (“ABSs”) and other speakers covered the Legal Services Act 2007 more generally and the resulting issues for Local Government.
- 1.3 The seminar ended with a general discussion and those elements of that discussion which are relevant to the Legal Services Board’s consultation are set out below.

2 Use of Alternative Business Structures by Local Authorities in the commissioner role

- 2.1 Local Authorities will have the option to outsource legal work to an ABS.
- 2.2 One participant questioned the extent to which legal services performed within Local Authorities were commoditisable (as this type of work probably represented the most economically attractive for an authority to outsource to a new form of supplier). As with any legal services outsourcing, there would be a need to consider carefully the balance between quality and cost in evaluating suppliers. Another participant noted that excessive outsourcing of work to ABSs could result in a higher churn of staff within Local Authority legal teams as a diminished variation of work might lead to job dissatisfaction.
- 2.3 Another participant noted that if Local Authorities select the correct type of work for which an ABS could be commissioned then Local Authorities would be able to use ABSs to their own advantage. It was further noted that an ABS could be used to offer expertise to Local Authorities across various different specialist areas of law, rather than seeking to offer the full range of legal services needed by a local authority.

3 Use of Alternative Business Structures by Local Authorities in the provider role

- 3.1 A Local Authority may make use of an ABS in its role as a provider of services. A Local Authority could partner with either another Local Authority or with the private sector in order to create an ABS. It is also possible that there could be multi party ownership split between both the public and private sector.

- 3.2 One participant questioned whether all Local Authorities would have the vires to trade in the form of an ABS as the current legal position on delivering services widely from an in house team was recognised as being somewhat uncertain. It was suggested that further legislative provisions in relation to local government law might be necessary in order to ensure that Local Authorities could maximise the potential savings which might occur via operation through an ABS.
- 3.3 It was noted that there might be the possibility for creating some flexibility within the rules for those ABSs which are created with the sole aim of delivering legal services to the public sector. It was further noted that the Legal Services Board consultation had already picked up on the current “one size fits all” approach to Professional Indemnity Insurance under the Solicitors Indemnity Rules and the fact that this may no longer be appropriate. It was emphasised that the Legal Services Board should avoid establishing a legal framework for ABSs with only the private sector in mind. It was further proposed that it might be possible to have beneficial arrangements, for example in relation to Professional Indemnity Insurance, for those purely public sector ABSs which present little regulatory risk but which may provide a method of reducing public expenditure and delivering effective public service.

Bevan Brittan LLP
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