



## The **co-operative** legal services

**Wider Access, Better Value, Strong Protection**  
**Discussion paper on developing a regulatory regime**  
**for alternative business structures – a response.**

13<sup>th</sup> August 2009

The Co-operative Group is a membership organisation owned by and operated on behalf of its members. The aims of the group are fourfold:

- To strive for world class levels of business performance;
- To be open, responsible and rewarding, putting co-operative values and principles into everyday practice;
- To enhance the lives of our people, members, customers and the communities in which we trade; and
- To work for the long-term success of the co-operative sector.

Membership of the Co-operative is open to anyone over the age of 16 who shares the values and aims of the co-operative movement.

With over 4 million members the Co-operative is the UK's largest consumer owned organisation. Additionally the Group services in excess of 15 million customers. The Group is a family of businesses – most of which are consumer facing – and its interests include farming, food retail, travel, pharmacy, funeral provision as well as the banking and insurance services within Co-operative Financial Services.

Shared by all of the Co-operative Group's businesses is a set of brand values of openness, honesty and trust. Championing the interests of our members has always been central to the Co-operative Group's strategy and, over the years, we have introduced a number of market leading initiatives in our various commercial sectors. Our Right to Know policy within Food Retail, for instance, is a commitment to provide the facts that people need to make informed purchasing choices, Travelcare's Holiday Report is a 'warts and all' report which publishes complaints made by our customers against leading holiday companies as well as ourselves and the Funeralcare Forum brought together experts to ensure that the interests of bereaved are central to our service. These are but three examples of our brand values in action and such openness, honesty and trust is also core to the delivery of assistance by Co-operative Legal Services.

### **Co-operative Legal Services**

Co-operative Legal Services (CLS) is a recent co-operative business venture, launched in 2006 as part of the Co-operative Group, to provide a comprehensive suite of consumer legal services to members and customers. CLS is based in two sites in Bristol and currently employs over 200 people.

One of the principal aims in establishing CLS was to deliver the vision of greater consumer confidence and choice that was set out in the Government's White Paper published in 2005 *The Future of Legal Services: Putting Consumers First*.

## **Introduction**

CLS welcomes the publication of this consultation document by the LSB and the opportunity to respond to it. The passage of the Legal Services Act through parliament was supported by Co-operative Party MP's and Lords. The desire by the LSB to implement the provisions of the Act in such a timely manner is to be commended.

CLS believes that the introduction of ABS's into the legal services market place will represent a huge step forward for the industry and for consumers.

## **The Purpose of Regulation**

CLS welcomes a well regulated legal services industry. Effective regulation is vital to the development and maintenance of best practice and for maintaining customer confidence in the 'business of law'. The 'business of law' is to:

- a. Provide consumers with quality legal advice and assistance....;
- b. through a channel they can easily access....;
- c. in a manner which they are comfortable with....;
- d. at a cost which represents value for money; and
- e. in such a way as to support the rule of law.

The role of regulation is to support the profession in the provision of this service – its structure and its integrity. Good and effective regulation will drive the development of the legal profession through having the consumer and public interest at its heart. Bad and ineffective or disproportionate regulation will be what gets in the way of allowing the profession to develop in the consumer and public interest.

An effective system of frontline regulation will enhance the performance of a legal practice's internal audit and risk functions. For the overwhelming majority of legal practitioners (large or small, private practice or in-house) who are honest and trustworthy and who already act to ensure their clients interests are protected, regulation should be welcomed as a mechanism whereby any creases in their business can be ironed out and best practice established.

Just as is the case with an end-of-year financial audit their findings and recommendations should be responded to with a "thank-you very much" and proposals to correct flaws or improve service adopted at the earliest opportunity.

From the regulator's perspective, except for those who deliberately breach the rules or who show culpable neglect, there should be no "got you" attitude. Rather, it should be one of help and assistance – albeit serious offences should be treated accordingly.

The new approach set out by the LSB in the consultation is therefore to be greatly welcomed.

**Question 1:** CLS believes that a mid-2011 start date for ABS licence is both desirable and achievable. These changes have been promised to consumers of legal services for many years and the delays that have been caused should not be protracted any longer.

The Joint Committee which looked into the then Legal Services Bill recommended in paragraph 291 of its report that there should be “less haste and more care” in respect of ABS’s. However, they were unable to produce any evidence or reasons which had not already been extensively considered to support this conclusion.

Lord Hunt has expressed similar views in paras 44ff of his Legal Regulation Review Initial Response to Evidence. Again no evidence is adduced to support this view other than that it is “*terra incognita*”. The fact that something may be unknown territory should not alone dictate a timetable for action. Keeping it as unknown territory for a longer period of time does not make it inherently more or less desirable.

CLS also believes that it is not territory which is wholly unknown. The regulation of employed solicitors by the SRA is well established. Although this is not yet entity based regulation, it is activity as well as individual regulation.

The positive reasons for pushing on with the formulation of the regulatory framework for ABS’s are well rehearsed and established. Principally it is driven by consumer interest. The emergence of new entrants with better resources, modern structures and customer focused business practices will greatly enhance consumer choice, service, value and confidence. Access to justice will be greatly enhanced.

The secondary driver is that it is in the interests of the profession, particularly those currently entering the profession for whom partnership in private practice is not necessarily the be-all-and-end-all of their professional aspirations. The opportunity to embark on a career with an ABS is equally, if not more, appealing to many aspirant lawyers and other professionals.

**Question 2:** Momentum is maintained through proper engagement with the parties that are enthusiastic and keen to make this happen. CLS is pleased with the enthusiasm of the SRA to engage in the process and alter its rules. The SRA consultation paper, Regulating Alternative Business Structures, is a very positive and welcome document. Other potential FLR’s should be encouraged to follow suit.

The danger of not maintaining the momentum and engaging with all parties is that more credence is given to the continued calls for delay by the likes of Lord Hunt in his Legal Regulation Review work on behalf of the Law Society. The current unacceptable status quo must not be allowed to continue for any longer than is absolutely necessary.

**Question 3:** If necessary the LSB should licence ABS's as this is what was envisaged in the Legal Services Act. However, as stated above, the progress being made by the SRA is encouraging.

**Question 4:** CLS does not envisage the requirement for financial and organisational separation to be too onerous. We look forward to release of the consultation paper in 2010.

**Question 5:** CLS believes that many traditional solicitor practices have their heads in the sand over the changes that are imminent in the legal market. That said CLS does not envisage a huge rush from non-solicitor organisations to get licensed as ABS's on day one of a new regime. Only a few organisations like CLS have openly expressed an interest in the market.

As the market develops both ABS and traditional firms will consolidate through merger and acquisition which should lead to greater levels of investment and efficiency which will be to the direct benefit of the end users of legal services.

**Question 6:** CLS is a provider of consumer legal services and can only therefore comment on this part of the market. We believe that the benefits to individual consumers will be extensive. These benefits have been well rehearsed throughout the who process. Fundamentally it is about accessing legal services through different channels and by different means to the traditional "walk-in-off-the-street-model". Consumers will be able to get help via the telephone or the internet/e-mail at times far more convenient to them. And they will be able to get this help from organisations and companies with which they are familiar.

In the consumer legal services market there are no existing household brands. As a result consumers end up playing a yellow-pages lottery to access legal help and assistance and they are very nervous about it. CLS believes that as a result of this nervousness many people who need legal advice and assistance never take it.

Companies with which people already have an affinity – to whom they have already turned to help for other matters – will be far more approachable. Consumers will feel more at ease and more confident in seeking help in the first place.

CLS also believes that the financial dynamic of the legal market could change to the customers benefit. This is because of the different business models (i.e. non partnership models) employed by commercial organisations.

In short the benefits to consumers are many, but are particularly relevant to the average “man in the street” for whom the days of the family solicitor are long gone.

**Question 7:** This is more a question for traditional law firms than CLS. However, CLS believes that there will be great benefits to individual lawyers from the inception of ABS's. Traditional partnership is no longer the “holy grail” for many young lawyers entering the profession. The opportunity to develop a career in a large consumer organisation with the diversity of available opportunities will be appreciated by many. Careers can be developed along the traditional lawyer route or into management (whether that be personal, operational, financial or marketing management). These opportunities do not exist to the same extent in private practice.

**Question 8:** The diversity policies of many large consumer organisations are far ahead of those in the legal profession. CLS has encountered no problems in attracting recruits from a whole range of backgrounds and experiences.

**Question 9:** CLS would expect ABS to be subject to the same qualification and CPD requirements as any provider of legal services.

**Question 10:** It is difficult to predict what impact an economic downturn would have on the legal market when ABS are introduced. Theories can be developed along a number of lines. For an organisation like CLS which has the backing a £9bn parent company the ability to fund day-to-day business is far easier to achieve than for a traditional practice. The collapse of some of the Icelandic banks had a significant impact on a large number of consumer legal practices.

**Question 11:** CLS has long argued that the consumer should be placed at the heart of the regulatory objectives. The risks to the consumer should therefore be the primary focus of the majority of regulatory activity. Both ABS and traditional practices should be subject to the same rules to ensure that consumer interests are not prejudiced.

**Question 12:** The most risky business model for the provision of legal services is the small single-partner practice model with one qualified lawyer overseeing, conducting and confirming compliance on all work undertaken. It is hard to envisage any ABS model which might be more risky to clients than this. ABS owned by large customer organisations will be far less risky as a result of the stringent internal audit practices that these companies operate.

**Question 13:** The issue of conflicts of interest has been extensively discussed in previous consultations. The basic requirement that a legal representative should not have an interest in the outcome of any instruction beyond their professional fees is a sound one. Thus, an underwriter recovering their own subrogated outlay at the same time as recovering a client's uninsured losses could potentially be in conflict as an underwriter is far more likely to accept a less than 100% settlement in return for a speedier settlement (90% recovery today is preferable to 100% in 12 months time). Clearly this could conflict with the client's best interests.

The solicitor/consumer relationship must be seen as sacrosanct. To this end the boards of CLS and the Co-operative Group have both passed resolutions noting that they have no right or jurisdiction to interfere in the way a legal instruction is pursued or handled. The LSB or FLR may wish to consider requiring such a similar undertaking from all ABS's. This will cover a whole host of issues including accounts rules, indemnity insurance, qualification and supervision, conflict checking etc.

**Question 14:** Risk based (see question 15 below) and entity based regulation go hand in hand.

**Question 15:** Risk based regulation of ABS's which is driven by the interests of the consumer is the most appropriate form of regulation. As set out above CLS believes that the purpose of regulation is to facilitate and oversee the "business of law". Its function is to ensure that consumers get what they require from the legal industry in a manner which does not prejudice that consumer. This requires the identification of risks that consumers face and setting appropriate safeguards to mitigate that risk. Subject to satisfaction of a fitness to own test, what different risks will consumers face from utilising the services of an organisation such as CLS from those faced by consumers instructing a traditional high street practice? None.

- The consumers will have their legal matter handled by appropriately qualified and supervised personnel.
- Their money will be handled in separate client accounts with full compliance with SAR.
- The firm's liabilities will be insured against negligence or failure.
- Independent complaints redress will be available through the regulatory regime.

Such a system of risk based regulation will encourage a robust internal governance and audit structure which could ultimately form the basis of self-certification. Once established and having proved themselves to the LSB/FLR, an ABS could sign off compliance with regulatory requirements. This could be done in conjunction with an ABS's external auditors if required. The LSB/FLR would be able to descend on the ABS at any time to ensure compliance and correct reporting.

The role of the LSB/FLR in this is one of support in ensuring that ABS's are set up correctly in the first place to avoid issues or problems arising. Such a system has the advantage of building a strong relationship between the LSB/FLR and the ABS which is vital in allowing both entities to get on with their jobs.

**Question 16:** As set out in question 15 above, CLS believes that it is absolutely proper to focus on high level principles.

**Question 17:** The potential to require that the majority of managers be lawyers seems to run contrary to the concept of entity based regulation. The fact that an individual is not a qualified lawyer with a practising certificate does not preclude them from being able to make judgments about adverse interests etc. The requirements for the number of lawyers and seniority should be the same as those imposed on private practice. In this regard the SRA consultation paper on licensing ABS's makes a valid observation as to whether private practice should be required to designate a HOLP and HOFA.

The HOLP role is one which will be filled by the senior qualified lawyer in the business. They will be responsible for the oversight and conduct of all legal work. The HOFA is the senior financial role in the organisation. The role is responsible for the financial compliance, reporting and auditing of the business. This includes responsibility for all client monies and transactions. Both roles should require an ability to demonstrate understanding of the regulatory rules to which the entity is subject.

CLS believes that both HOLP and HOFA should have sufficient authority to be able to fulfil their responsibilities.

**Question 18:** The HOLP should be required to meet the same criteria in terms of qualification as an individual solicitor would have to meet to set and establish their own firm. As indicated above the HOFA is a senior financial role, although whether an individual should be a qualified accountant is a debateable point.

**Question 19:** As indicated above, CLS believes the most high risk bodies to consumer protection are the single partner firms with all important roles merged into one. The balance has to be based on how well any client will be protected.

**Question 20:** Any regulatory requirements to which only ABS's are subject (e.g. fit and proper test for non-lawyer managers) must be absolutely justifiable so as not to cause an unlevel playing field between ABS and private practice. Some suggested additional requirements are not justifiable, e.g. a requirement that an ABS should

carry a greater level of professional indemnity insurance than private practice. It is not a great step to apply existing rules on an entity basis.

CLS believes that the consumer protections should be exactly the same whether they be utilising the services of an ABS or private practice. This will cover a whole host of issues including accounts rules, indemnity insurance, qualification and supervision, conflict checking etc.

The issue of the level playing field becomes particularly relevant in the provision of non-reserved legal services. CLS believes that, as is currently the case, all reserved services should only be provided by solicitors in a regulated environment. Non-reserved services are not reserved because it is not necessarily felt that consumers should be prejudiced in their absolute choice of provider. CLS therefore believes that non-reserved services should only be regulated where the entity providing those services holds itself out as solicitors in order to attract business. If they do not hold themselves out as solicitors (in their trading name/legal name etc) they should be allowed to compete on a level playing field with all other providers. On the other hand, if they choose to hold themselves out as solicitors they should be regulated as solicitors.

Such an approach will obviously require a change to the separate business rule.

**Question 21:** This depends very much on the interpretation of the term “access to justice”. CLS believes that access to justice will be greatly enhanced through the introduction of ABS’s. “Access to justice” is not limited to mere geographical spread. It is far wider. Under the new provisions legal services will be delivered by various mechanisms and at various times currently unavailable to consumers. They will also be delivered by organisations with whom consumers already have a relationship and who they are far more comfortable in approaching for assistance.

Under the current system it is the most vulnerable members of society who lose out. Many vulnerable people do not have access to justice at present because they are ignorant as to how they can get hold of the help and assistance they need. The advent of ABS’s will provide different entry points for vulnerable persons to get the help they require.

It is also worth noting that if the definition of access to justice is limited to that of geographical spread then there are already an increasing number of advise deserts in England and Wales. The rise in specialism and increase in commoditisation within existing law firms means that many citizens do not have access to local specialist assistance. This issue is completely unrelated to that of ABS’s.

CLS cannot conceive of an application to enter the market place which will necessitate a referral to the OFT.

**Question 22:** CLS believes that all ABS's should carry insurance to the same level of cover as that required by private practice. CLS already carries such insurance and has experienced no issues in obtaining it. CLS does not believe that appropriately structured ABS's operating to the same professional rules as private practice will have any extra hurdles to get over in obtaining insurance as private practice.

As the nature of work conducted by ABS's is the same as private practice and because this work will be conducted or supervised by lawyers as in private practice CLS does not envisage any great change to the maintenance of the Assigned Risk Pool.

If it becomes an issue for ABS to successfully obtain sufficient insurance cover because the market develops differently to how CLS envisage, the LSB could consider introducing a self-insured bond system similar to that used by some companies for their vehicle fleet.

**Question 23:** Complaints against ABS should be handled in exactly the same way as complaints against a traditional legal services provider. Large consumer organisations are well used to operating under regulatory regimes with rigid complaints handling processes, e.g. CLS is also regulated by the FSA and is therefore subject to the Financial Ombudsman Service regime.

**Question 24:** CLS believes that external owners should be allowed to own up to 100% of an ABS. The "fit and proper" tests that apply should be broadly similar to those used by the FSA across its various functions. It would be very difficult to impose additional test requirements which individual solicitors are not themselves subject to by means of their professional qualification.

CLS believes that the more pressing issue which needs to be given consideration is how an FLR would deal with an individual who, being an owner/part owner of an ABS, ceases to be a fit and proper person. If a partner of an existing practice is stripped of their practising certificate the partnership agreement should provide the mechanism for managing and agreeing their exit. A similar mechanism will need to be agreed for an ABS owner.

**Question 25:** CLS' views on reserved/non-reserved activities are set out in response to question 20 above.

**Questions 26-28:** CLS has no fixed views on the issues relating to special bodies beyond the requirements for those special bodies to comply with client protection rules.

### **Conclusion**

CLS welcomes the LSB consultation document and the sentiments expressed. We are keen to see the advent of the ABS regulatory regime as soon as possible and encourage the LSB in this regard.

We would be pleased to meet with the LSB to discuss further any of our responses or any other issues. Potential issues for discussion include our experiences in:

- lines of demarcation for regulation;
- different legal entities within the same brand;
- regulation of non-lawyers; and
- self-certification.

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