



KYSEN Legal Business Innovation Watch



Welcome to the Autumn 2016 edition of our *Legal Business Innovation Watch*, an e-update detailing recent press coverage of how the professional services community is responding to major regulatory and other market change.

Please do give us your feedback, as ever.

Best regards,
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Press summary
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Kysen – Business Innovation Watch, Autumn 2016

Opening the sector to greater competition and fostering innovation were two key objectives for the post-Legal Services Act era. There have undoubtedly been some noticeable initiatives but many observers say the market is yet to see any genuine game changer.

A few local authorities unexpectedly turned to the ABS model to rationalise their services. The latest illustration of this trend is the decision by the [first two council-backed ABSs to merge](#), while Kent County Council – an early pioneer in alternative approaches – has [finally applied to become an ABS](#), unveiling ambitious plans to roll out its model across the country. Could the news of [Burford Capital's ABS law firm](#) launch be the real market disrupter everyone has been waiting for?

Meanwhile, several professional services and accountancy firms have also started offering legal services. Manchester-based [Leonard Curtis](#) is the most recent one to do so, with the assistance of a former DWF managing partner. Such developments are undoubtedly a challenge for law firms. The greater concern however is that [the accountants' regulator, ICAEW](#), has applied to become an ABS licensing authority in respect of tax work. But in a market now [worth more than £30bn](#) in fees, lawyers are fighting back.

The Bar Standards Board, long unconvinced by the rationale behind the Legal Services Act, is about to [become an ABS licensing authority](#). There are even suggestions that the barrister and solicitor professions are [closer to fusion](#) than they are prepared to admit, which could give birth to a new class of [trial lawyers](#) in the UK. Meanwhile, traditional law firms, especially larger ones, are also beginning to fully embrace technology, with several Top100 firms investing big money in [artificial intelligence](#).

The government, keen to accelerate the pace of change, has proposed amendments to the Legal Services Act, and the Legal Services Board too has made further [proposals for reform](#) (although the super-regulator has concerns over [regulator swapping](#)). But it is ABSs, the exemplification of the new legal order, that continue to divide stakeholders: the SRA now suggests that it should be allowed to take a more [flexible approach to ABS licensing](#), but the Law Society – perhaps rightly – is sounding caution about claims that ABSs are [no less risky than traditional firms](#).

ALTERNATIVE BUSINESS STRUCTURES – LOCAL AUTHORITY

Local authorities create biggest public ABS

The first two councils who were granted alternative business structure licences have merged to become the largest local authority legal team in the UK.

The legal department at Buckinghamshire County Council and Milton Keynes Fire Authority formed an ABS in August 2014 (see *Kysen Legal Services Act Update, Winter 2015*). A few days later, their counterparts at Harrow and Barnet councils, who set up a joint venture HB Public Law (HBPL) in 2011, also gained an ABS licence.

The two had been working together but they have now become a single practice with about 150 lawyers, making it the biggest public legal team in the country, ahead of Birmingham City Council's legal team of 130.

Jessica Farmer, HBPL's head of legal practice, told *Legal Futures* that the move was a TUPE transfer of Buckinghamshire staff to HBPL and represented "an expansion of the shared service" between the two councils.

Another local authority, Kent County Council, has long considered becoming an ABS but has only just applied to the SRA. With plans to pick up work from US firms and possible expansion to other regions via joint ventures with other local authorities, the move would provide a further example of the new era ushered in by ABSs.

Source: [Legal Futures](#), 15 July 2015; [Law Society Gazette](#), 31 August 2016; [Law Society Gazette](#), 5 September 2016

LITIGATION FUNDING – ALTERNATIVE BUSINESS STRUCTURE

Litigation investor sets up own law firm

The London division of a global investment company is the first of its kind to branch out into legal services by setting up an alternative business structure. Burford Capital, a litigation funder, has set up Burford Law in a bid to help clients who have been successful in securing judgments, but who need help enforcing them.

The move follows the firm's own research that showed winning claimants will only rarely receive the full value of court-ordered awards. Burford say their research shows that over the past five years, only 42 per cent of corporations had received the full amount that they were awarded. What's more, nearly a fifth of the lawyers consulted said their clients regularly received less than 50 per cent of the value of an award.

Burford Capital stated that the ability to offer legal services to their clients will "make for a faster, more seamless and generally happier outcome for clients."

Earlier this year, Welsh law firm, Capital Law, took a similar step in reverse, branching out of legal services by launching its own commercial litigation funding services.

Source: [Legal Business](#), 5 October 2016; [The Times](#), 6 October 2016

PROFESSIONAL SERVICES – BUSINESS CONSULTANTS

SME adviser branches out into legal services

A Manchester-based professional services firm is the latest non-legal business to launch into the legal services market.

Leonard Curtis Business Solutions Group, which specialises in advising small and medium-sized businesses, has set up a standalone legal operation headed by former DWF Manchester managing partner Andrew Gregory.

Legal services offered will include advice on startups, business finance, contract reviews, employment advice, cash management, debt recovery and dispute resolution but the company will continue to refer specialist work to its existing network of external law firms including DWF. The new ABS will offer fixed fees "wherever possible", according to Gregory.

Source: [Law Society Gazette](#), 5 September 2016

RESERVED LEGAL ACTIVITIES – ACCOUNTANTS

Accountants' regulator applies to conduct reserved activities

The Institute of Chartered Accountants in England and Wales (ICAEW) has applied for the right to allow members to conduct reserved legal activities in a move that would see accountancy firms compete directly with lawyers for tax work.

ICAEW members may be authorised to conduct reserved activities in respect of probate but this latest application would allow the institute to authorise accountants to conduct litigation, exercise rights of audience, and carry out reserved instrument activities in relation to tax work. This would also give accountants their long-sought access to legal professional privilege.

As with probate, a firm of accountants where only some of the partners are qualified to conduct reserved work would have to become an alternative business structure (ABS). Of the 220 or so firms able to do probate work, around 150 are ABSs.

Source: [Legal Futures](#), 22 July 2016

REGULATION – BAR STANDARDS BOARD

Bar Standards Board a step closer to becoming ABS regulator

The Bar Standards Board took its first step as a prospective alternative business structure regulator by tendering for intervention agents, the professional firms who step in where ABSs get in trouble.

The Legal Services Board approved the BSB's application to become a licensing body for ABSs in March (see *Kysen Business Innovation Watch, Spring 2016*). Subject to final approval by the Lord Chancellor, the BSB is expected to start authorising ABSs in October this year.

The BSB said it would take control of an ABS if it was in the interests of clients and the public. This could include situations where an authorised body is failing, is in breach of any of the conditions of its license or has been abandoned by its owners and managers.

The Bar regulator said it could not predict the likely number of interventions each year and it is therefore proposing to enter into a call-off contract with the successful bidders.

Source: [Law Society Gazette](#), 6 September

PROFESSIONS – BARRISTERS

Fusion of professions already under way

Barristers and solicitors are still separate professions but there are growing signs that fusion of the two could be getting much closer than officially acknowledged, argues *Gazette* reporter Chloe Smith.

Smith accepts that the number of entities licensed by the Bar Standards Board – only 54 – is far lower than the expected 400, with most barristers choosing to stick to the traditional chambers model.

Direct access had a similarly slow take up, Smith says, but now more than half of barristers are licensed to provide direct access. The ability to switch regulator could also blur the distinction, she adds.

Others comment that the legal professions have been fused since 1866 in Ontario, where the Law Society also regulates paralegals. A barrister further suggests that a single profession could work, where law firms could buy in advocacy services where required.

Source: [Law Society Gazette](#), 13 July 2016

BARRISTERS – ALTERNATIVE BUSINESS STRUCTURES

Barrister ABSs herald the advent of trial lawyers

The way the Bar has operated before the Legal Services Act reflects an “arcane system” belonging to “an earlier age” with a flawed perception about ethical behaviour, a former clinical negligence barrister turned business support specialist has said.

In a blog for *Legal Futures*, Charles Feeny says “the development of a Bar Standards Board (BSB) licensed entity, which is promised by 1 October, may be the catalyst for significant change at the Bar”. Such an entity, Feeny says, would enable barristers to employ paralegals and “to offer a wider range of services through them and charge for that service”.

According to Feeny, the likely introduction of fixed fees in personal injury and clinical negligence litigation could see such entities take over cases wholly for trial, “ushering in the advent of the ‘trial lawyer’ in the English legal system”.

Feeny adds that this could be advantageous for the Bar in terms of apportionment of fixed fees, as well as for law firms who could find it commercially attractive to pass on a case for trial while they concentrate on cases that are fit for settlement.

Source: [Legal Futures](#), 27 July 2016

LEGAL SERVICES SECTOR – ALTERNATIVE BUSINESS STRUCTURES

UK legal market breaks £30bn fee mark

UK-based legal services firms have billed a record £30.9 billion in 2014/15, up 1.3 per cent on the previous year, with alternative business structures (ABS) gaining significant shares, according to a leading financial service body.

TheCityUK's *UK Legal Services 2016* report shows the fifth successive year of growth for legal services firms. This has been supported by an increase in net exports of UK legal services, up 11 per cent in 2014 to a record £3.6bn, while the sector's contribution to the UK economy increased to a record £25.7bn in 2015 (1.6 per cent of GDP).

Chief executive Chris Cummings said the report highlighted "the significant restructuring across the industry over recent years, with newer entrants to the market – including the major accountancy firms, innovative smaller law practices, contract and on-demand lawyers and due diligence specialists – increasingly competing for traditional law firms' business".

Source: [Scottish Legal News](#), 20 July 2016; [TheCityUK](#), 20 July 2016

TECHNOLOGY – LAW FIRMS

Slaughter & May latest City firms to invest in AI

Slaughter and May has become the latest City firm to invest in artificial intelligence, teaming up with Invoke Capital, a technology investment fund headed by Autonomy founder Mike Lynch.

The firm has been testing and piloting software which is intended to speed up the legal due diligence process by using AI to automatically read and understand hundreds of pages of legal documents every minute.

Invoke Capital was founded by Lynch, who instructed Slaughter & May in 2011 when his company Autonomy was taken over by Hewlett-Packard.

Other City firms to have incorporated AI into their processes include Linklaters and Berwin Leighton Paisner, both of which use software developed by RAVN Systems. Clifford Chance has partnered with software provider Kira Systems. And Pinsent Masons has invested in a system called Term Frame that emulates the decision-making process of a human.

Source: [The Lawyer](#), 14 September 2016; [Law.com](#), 14 September 2016

REGULATION – COMPETITION

Regulatory reform needed to increase competition in legal services

The pace of change in the legal services sector since the passing of the Legal Services Act in 2007 has remained slow despite a number of structural improvements, according to the Legal Services Board.

The board's latest research suggests that regulatory reforms have encouraged greater competition but that innovation has been driven mostly by new providers such as alternative business structures. One main obstacle to further competition, it notes, is the lack of transparency about prices, due in part to the absence of a high-profile comparison website.

Meanwhile, although consumers now shop around a little more than they used to, more handle legal problems on their own and fewer seek professional advice. This trend could be the result of technological developments in some cases, with more user-friendly online services, but it could also be a consequence of the legal aid reforms, which have seen an increase in litigants in person.

The report also notes that fixed fees were on the rise but that many consumers still regarded legal services as costly. For the super-regulator, only further legislative reform of the sector would bring about fuller liberalisation. It made a number of proposals in this sense as part of its 'Removing barriers to competition' consultation that ran until 3 August.

Source: [Legal Services Board](#), 4 July 2016; and ['Removing barriers to competition' consultation](#), 3 August 2016

REGULATORS – CONSUMER PROTECTION

LSB investigates “regulator swapping” trend

The Legal Services Board has started to look into the emerging trend among legal services providers to switch regulator and whether this presents a risk for consumers.

The board considered the issue at its July meeting, saying “more legal services providers have begun to take advantage of the opportunity to choose their regulator”. Of particular concern is the extent to which the ‘receiving’ regulator checks and uses a lawyer or firm’s previous regulatory history.

In a paper, the LSB noted that the issue seemed to have been looked at from the perspective of providers and regulators, with little discussion about consumer interests.

Providers changing regulator cite “easier authorisation processes, more proportionate regulatory arrangements, easier insurance arrangements and better value for money” as a reason for their decision.

Source: [Legal Futures](#), 3 August 2016

ALTERNATIVE BUSINESS STRUCTURES – AUTHORISATION

SRA calls for more flexible ABS authorisation rules

The Solicitors Regulation Authority has given its support to Government proposals to free up current rules on the authorisation of alternative business structures, saying this would allow it to concentrate on more complex applications such as those involving groups and private equity structures.

The plans involve amendments to schedule 13 of the Legal Services Act and would remove the existing detailed rules on "restricted" interest in an ABS. They reflect the Government's view – challenged by the Law Society (see *below*) – that ABSs have proved no more risky than traditional law firms.

ABS members with restricted interests are defined as having a 'material or controlling interest' and are subject to a 'fit and proper person' test. This approach has given rise to difficulties as the Act's extended definition of those with restricted interests includes consideration of that person's 'associates'.

The regulator said the current restrictions are unnecessarily prescriptive and can lead to over-regulation in some areas and under-regulation in others. It added the rules introduced unjustified differences in regulation for ABSs compared to traditional law firms and created unnecessary "barriers, blockages and inconvenience for new entrants".

Source: [Legal Futures](#), 11 August 2016

COMPETITION – ALTERNATIVE BUSINESS STRUCTURES

ABSs no less risky than traditional firms

Claims that alternative business structures are less risky than traditional firms and that they have increased competition should be taken with caution, the Law Society has warned in its response to the Government's consultation on changes to the Legal Services Act 2007.

"There is some evidence that argues ABS may be more innovative in the way they deliver services and handle complaints, although innovation can describe new-to-the-firm services rather than new-to-the-market services. However, we are not aware of any robust evidence demonstrating that ABS are providing cheaper legal services, and thereby increasing access," the society said.

Chancery Lane agreed that ABSs could provide benefits for solicitors, allowing firms to raise capital to invest in new technologies and processes that can make their business more profitable. However, it said, most ABSs were smaller firms wanting to include a non-lawyer into the partnership, and that there had been some high-profile failures.

"It is critical that the regulatory framework, including client protection, is equal for ABS and solicitors' firms as this will enable fair competition, which benefits clients and is in the public interest," said Law Society chief executive Catherine Dixon.

In its own response to the Government's plans, the Legal Services Board has come out in favour of lifting a number of requirements on ABSs, including the obligation to report any failure to comply with regulatory rules. "There is no evidence in support of this additional burden on ABSs, and it would be more proportionate and consistent if the same arrangements applied to all firms," the LSB said.

Source: [Legal Futures](#), 3 August 2016; [Today's Conveyancer](#), 4 August 2016; [Law Society Gazette](#), 12 August 2016

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