



Welcome to the Autumn 2015 edition of our Legal Services Act Update, an e-update detailing recent press coverage of how the professional services community and regulatory bodies are responding to the major changes facilitated by the Legal Services Act 2007.

This issue highlights both business innovation and regulatory challenges and reactions in the years since The Legal Services Act came into force. As ever we welcome your feedback.

Best regards,
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Press summary **Issue: Autumn 2015**

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This issue

When David Edmonds left the Legal Services Board (LSB) in April last year, his parting shot to the sector was an invitation to trim down the regulatory rulebook and to merge all frontline regulators into a single one.

More than twelve months on, little has changed on the regulatory landscape, and calls to recast the Legal Services Act (LSA) have remained just that. The new justice secretary, Michael Gove, has contributed his views to the debate,

commenting that regulators were in danger of “falling over each other’s feet” but he has been more concerned with achieving more immediate cost savings for his department.

In the meantime, the LSB has produced a set of proposals, jointly with the eight frontline regulators, which would simplify the regulatory process and speed up the licensing of Alternative Business Structures (ABSs). Its much-anticipated recommendations for more radical reforms that would liberalise the market further were published at the very end of July. While it will disappoint those expecting clear proposals for change, the report contains options that could lead to a thorough overhaul of the Legal Services Act, including total separation between representative and regulatory bodies.

It’s not that lawyers have been waiting for the regulators to allow them to innovate. However, although a large majority of legal services providers are ready to embrace change, nearly a quarter cite burdensome regulation as an obstacle.

So for legal observers, the revolution promised by the LSA is yet to take place. True, there have been some noteworthy developments – good and bad – at the consumer end of the market, with several organisations using the ABS model to provide streamlined services. And top-50 firm Gateley’s recent AIM listing generated particular interest, precisely because the firm is *not* operating at the commodity end of the market. According to some commentators, Gateley’s IPO is only a first but important step in the evolution of ABSs. Meanwhile, as the firm publishes its revenue expectations – up ten per cent on last year – others wonder whether it is making the best of its new ABS clothes.

But for all the benefits the ABS model has still to demonstrate, there are signs that it could become popular with foreign firms. Foran Glennon is only the second US firm to go down this route but it is already considering a possible tie-up with forensic accountants.

And whatever the pace of liberalisation, further changes are likely to take place in the way legal services are consumed, not least of which is the emergence of lawyer-rating services. However unpalatable this may sound, lawyers should engage in the discussion, for no other reason than the fact that otherwise, these TripAdvisor-like reviews for lawyers will simply happen without their input.

Regulators in danger of ‘falling over each other’s feet’

Legal regulators are in danger of “falling over each other’s feet”, the Lord Chancellor has said as he pledged a review of the Legal Services Act.

Appearing before the Justice Select Committee on 15 July, Michael Gove unveiled his plans for a review of the justice system. These covered legal aid, the reform of the court system including court closures, and the future of the Human Rights Act.

In reply to a question by Conservative MP Alberto Costa, Gove said the Ministry of Justice would look into the regulatory framework set up by the LSA, which created the new super-regulator, the Legal Services Board.

The justice secretary acknowledged concerns over legal aid cuts but he said "it was the case that too much taxpayers' money was being spent on legal aid. There have to be reductions".

On the Human Rights Act, he said it was a matter of striking "the right balance between protecting people but also to ensure that some of the concerns about how the human rights act has operated have been addressed".

Source: Legal Business, 15 July 2015 ([news](#))

Regulators to ditch 'extremely prescriptive' requirements for ABS licensing

A more discretionary regime for the licensing of ABSs could see regulators move away from "extremely prescriptive" requirements and shift to a principle-based approach.

In a set of proposals collectively produced by the frontline regulators under the LSB's impetus, the super-regulator presented options to lighten the regulatory burden and improve the efficiency of the regulatory process. Alternatives to the handling of client money are also being considered.

The proposed "minor changes" would simplify the current approval process for ABSs, which "assumes – without evidence – that ABSs are more risky than other types of providers thereby imposing higher costs and burdens on them".

This would address discrepancies such as the obligation on the head of legal practice and of finance and administration in an ABS to report any failure to comply, whereas law firms only have to report material breaches.

The proposals would also scrap more than 20 pages of detailed requirements contained in schedules to the LSA relating to non-lawyer ownership of an ABS. Of particular concern are the "cost and delay of identifying everyone that falls into the current definition of 'material interest', including their associates such as spouse, children, employees, other businesses of which they are a director etc".

Another suggestion is to remove the requirement on licensing authorities to consider whether an ABS applicant improves access to justice.

Responding to government calls for greater liberalisation, LSB chief executive Sir Michael Pitt said the regulators recognised "the need to seek new ways of delivering access to justice in an environment of on-going pressure on public spending".

Separate cross-regulator discussions facilitated by Professor Richard Mayson on behalf of the LSB have focused on more fundamental reforms of the LSA. Their outcome has been compiled in a report which is now being considered by the Government. One main recommendation is complete separation between the representative and regulatory functions ([see below](#)).

Source: Law Society Gazette, 20 July 2015 ([news](#)), Legal Futures, 21 July 2015 ([news](#)); Legal Business, 21 July 2015 ([news](#))

Super-regulator backs total independence of frontline regulators

Full independence of frontline regulators is a prerequisite to regaining public trust and achieving effective and proportionate regulation, a paper produced for the LSB has suggested.

The long-awaited report follows a Government-led summit in July 2014 where regulators were asked to consolidate their respective experiences of the LSA. Its publication comes just a few weeks after the new justice secretary Michael Gove pledged to look into the effectiveness of the regulatory structure set up by the Act ([see above](#)).

Prepared on behalf of the LSB following cross-regulator discussions chaired by Professor Richard Mayson, the report acknowledged the progress made by regulators individually but said "a number of significant issues are holding back the pace of reform and make the work of the regulators far more difficult than is necessary."

It identified a number of key problems such as the concept of reserved activities (i.e. services only a licenced solicitor is allowed to offer) – six of them, "largely an accident of history, rather than the result of any recent, evidence-based assessment of the benefits or risks created by those activities".

Also on the list is the resultant approach taken by some regulators which brings all activities within the scope of regulation, including non-reserved activities, once a firm has been authorised for one or more reserved activities. "While this offers blanket consumer protection, it is a response by the regulators to the existence of a fixed list of reserved activities and thus is equally not based on a targeted or proportionate reaction to the risks to the public interest or to consumers," the paper said.

Conversely, there was "a regulatory gap" where the provision of non-reserved legal services provided by those who are not otherwise authorised cannot be brought within the scope of legal services regulation regardless of the risks to consumers.

Insufficient independence between some lawyers and their regulators was the fourth issue, the consequence of "the historic link between the professional bodies and regulators being largely preserved under the LSA". This for some bodies is holding back the pace of reform and undermines public confidence in the independence of regulation. It also means that practitioners are required to fund representative activities regardless of their wishes.

Aside from its strong observations on the independence of regulators, the report falls short of making specific recommendation. While stating there was a "compelling case" for reform, it considers that there is no "burning platform" for emergency attention.

It does, however, envisage the possibility of scrapping all frontline regulators and replacing them with a single one sub-divided into specialist units – an idea first mooted officially by former LSB chief executive David Edmonds in 2014.

Source: Legal Futures, 27 July 2015 ([news](#)); Solicitors Journal, 27 July 2015 ([news](#)); Legal Services Board, 27 July 2015 ([report](#))

Minority of legal services providers embraces innovation

Only one in four legal services providers has embraced innovation in the past three years, even though a substantial majority says their organisations encourage it.

According to research carried out jointly by the LSB and the Solicitors Regulation Authority (SRA), 80 per cent of providers say their management structure makes innovation possible, with 40 per cent having practical schemes in place to foster new ideas, but only 25 per cent have actually introduced new or improved services since 2012.

Regulation was cited as the greatest barrier to innovation (23.6 per cent), followed by lack of finance (17.4 per cent), and less than ten per cent said attitudes among staff or clients were holding back innovation.

The survey, which canvassed 1,500 providers including 900 law firms and 156 barristers' chambers, highlighted fixed fees, new practice areas and greater use of technology as the main changes, with solicitors being more innovative than barristers.

In particular, law firms were making greater use of electronic communications with clients, used electronic forms and case management systems. Social media, on the other hand, was used almost exclusively to advertise services or provide free information, but not legal services.

The survey, which was reported widely in the legal press, was also criticised in a *Law Society Gazette* blog for not revealing much that the profession didn't already know. Instead, it said, the SRA should work on lifting obstacles to innovation by easing the regulatory burden.

Source: Law Society Gazette, 7 July 2015 ([news](#)); Solicitors Journal, 7 July 2015 ([news](#)); Law Society Gazette, 8 July 2015 ([blog](#))

Gateley listing a 'significant step' in the evolution of ABSs

[Warning: this is a co-published piece]

The stock market listing of Gateley, the first English law firm to float, marks "another significant step in the evolution of alternative business structures", according to a leading accountant.

"Once the regulatory regime for law firms is relaxed, it's only a matter of time before law firms turn to the capital markets to raise money to fund growth or acquisitions", says Baker Tilly's senior tax partner George Bull.

Bull believes that the ABS model is especially suited to consumer legal services, which are readily scalable and require minimal partner involvement, but he warns that the corporate structure will also come with challenges for their owners as they seek to retain talented lawyers.

Further, Bull continues, as the main drive behind the advent of ABSs shifts from public to consumer interest, the key issue will be how regulators and investors respond. It is arguable, he posits, that consumers are beginning to benefit despite a persistent "degree of murkiness" surrounding the so-called claims culture.

As to future regulatory changes, this should be seen in the wider, global context and on the willingness on the part of the Government and regulators to reform the system further. Finally, most investors lack the required understanding of how law firms work to be tempted, at this stage at least, to invest in one.

Source: Legal Business, 8 July 2015 ([news](#))

AIM-listed Gateley on course for 10 per cent revenue increase

Full-service firm Gateley, which listed on the AIM in June, is expecting its 2014-15 revenue to rise ten per cent on the previous year, according to the firm's first trading statement.

In a pre-close trading update the firm said revenue in the second half of its financial year "continued to demonstrate strong fee income growth" and that "as a result full year revenue for the Group is expected to be not less than £60 million.

The top-50 firm became an ABS in 2013 and was the first UK firm to float on the stock exchange. But with most of the capital raised going to Gateley's partners, some commentators have suggested that there is no war chest to fund possible expansion.

The SRA said it had been supportive of Gateley's conversion to plc but that it involved "tailoring its approach to account for the risks presented by public ownership".

SRA chief executive Paul Philip said: "It is good to see the emergence of new business models bringing investment into the sector. Our work with Gateley plc on their flotation is part of our commitment to freeing up firms to do business, supporting competition and development."

Gateley will announce its preliminary results for 2014-15 on 15 September.

Source: Legal Futures, 16 July 2015 ([news](#)); The Lawyer, 20 July 2015 ([analysis](#))

US firm considers setting up ABS with accountants

Foran Glennon Palandech Ponzi & Rudloff has become the second US firm to set up an ABS in the UK, possibly with a view to merging with an accountancy firm.

ABS pioneers from the US were New York-based Cahill Gordon & Reindel, which have been in London since 2000 and became an ABS in March this year (2015).

Foran Glennon, however, could be the first US firm to set up an in-house forensic accountancy capability by bringing accountants in as members.

"Part of our discussions over the last few months have been over whether we could join forces with a firm of accountants," said Damian Cleary, one of two individual partners at Foran Glennon UK, in an interview with *Legal Futures*. He suggests that one of the ways this could happen would be through a merger, with accountants becoming partners in Foran Glennon UK.

Cleary also said that external investment through private equity could be a further option at a later stage.

Source: Legal Futures, 12 June 2015 ([news](#))

EU funds research into lawyers' online rating facility

The body representing national law societies in the European Union has been granted funding by the European Commission to undertake research into a TripAdvisor-style website for lawyers.

The grant was awarded to the Council of Bars and Law Societies of Europe (CCBE) and the European Lawyers' Foundation to conduct a study into the feasibility of adding a lawyer-rating element to the EU's own find-a-lawyer service.

One of the issues the concept raises is whether local law societies should be involved at all in these lawyer directories, according to former CCBE secretary, Jonathan Goldsmith.

In its Good Practice Standards for comparison websites, the LSB's Consumer Panel has recommended that such websites should be independent. This means they should not be "not owned, controlled or managed by legal services providers". So could a professional organisation, which is not itself a legal services provider, own one, asks Goldsmith.

Source: Law Society Gazette, 20 July 2015 ([comment](#))



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