

## ABS: a brave new world?

The Legal Services Board (LSB) has published research providing a detailed analysis of the legal services market and exploring the developments likely to result from the implementation of the Alternative Business Structures (ABS) regime.

ABSs are a new type of firm provided for by the Legal Services Act. They can be owned by external businesses and may provide both legal and non-legal services. Before operating, ABSs must be licensed by a relevant licensing authority. Despite the application process opening on 6 October 2011, at the time of writing the Council of Licensed Conveyancers (CLC) was the only body authorised as a licensing authority.

While the research report refrains from 'second guessing' the impact of the regime it does identify four factors that will affect the take up rate of ABS; access to capital, the regulatory environment, behaviour of law firms and consumer behaviour.

The increased access to capital that goes hand in glove with ABSs will be most attractive to mid-tier firms (defined as those with a turnover of £100 - £200 million) which are "highly cash generative" but nevertheless have room to expand. In contrast top-tier firms are reported as being reluctant to seek private capital, as it would mean ceding control. Furthermore,

partners of such firms would be forced to relinquish a portion of their equity stake.

The cost of internal and external regulation is expected to discourage firms from becoming ABSs. The SRA's new outcome focused approach to regulation is unsurprisingly identified as potentially resulting in additional costs for ABS firms which are deemed as 'high risk', due to their nature or ownership.

The majority of initial applicants for ABS are expected to be existing firms choosing to convert for commercial reasons. The main attraction for these firms is identified as the ability to market legal products as 'commodities' alongside

non-legal services. A higher take up of ABSs over time is predicted to be a potential encouragement to new entrants such as supermarkets and banks, as well as increasing private equity investment in city firms.

As consumer choice within the legal service market increases the firms that are expected to flourish are those most able to meet consumer needs – whether they are ABSs or not. However, the report acknowledges that ABSs may be more aware of consumer needs. Their business-orientated approach means they may also practise more efficiently than traditional firms.

For the full report, go to <http://snipurl.com/uvox4>



# find me an expert witness

Solicitors looking to appoint an expert witness may have difficulty in finding one to instruct, following the recent decision in *Jones v. Kaney*, which could lead to a significant reduction in the number of individuals who are willing to undertake such work in the future.

This case involved an expert (Kaney), who had acted for Jones, following a road traffic accident. Kaney prepared a report advising that in her opinion Jones was suffering from post-traumatic stress disorder as a result of the accident. The defendant to Jones' claim appointed their own expert who came up with a different opinion. As is commonplace when experts disagree, a meeting of the experts was ordered, following which a joint statement was prepared.

That statement suggested Kaney had changed her opinion. In fact she had failed to read the statement the other expert had prepared. Jones' claim therefore settled for a lower amount than would otherwise have been the case. Jones therefore decided to bring a negligence claim against Kaney. Up till then, it was believed that experts were immune from suit when acting in that capacity and merely owed a duty to the Court and not to the relevant parties. Jones' claim was initially dismissed, with Kaney making a plea of witness immunity in line with the decision in the case of *Stanton v. Callaghan*. Jones decided to appeal the decision.

The Supreme Court by a 5-2 majority came down in Jones' favour and thus swept aside the immunity



for breach of duty that expert witnesses had previously enjoyed, thus overturning the decision in the *Stanton* case. As a result, it is likely that experts who come from professions where exposure to liability is not the norm, will now withdraw from the work, leaving solicitors with a lack of experts to appoint.

## Solicitors' Accounts Rules – top ten problem areas

Solicitors are required to operate in accordance with the **Solicitors' Accounts Rules (SAR)** when dealing with client money. The rules are very rigid and precise resulting in any errors being a breach of those rules. Here are some of the more common problem areas.

- 1** Lack of authorisation for withdrawals ie where no specific authority for withdrawal is signed by an authorised person.
- 2** Money earmarked for costs becoming **office money** but not transferred out of the client account within fourteen days.
- 3** Client money paid into a non-client account. This can be as simple as the client bank account name not including the word **client**.
- 4** Incorrect accounting for professional disbursements eg paying client receipts relating to unpaid professional disbursements into office account.
- 5** Using the bank reconciliation to include adjustments which should more properly be adjustments in the cashbook.
- 6** Small sums of money retained in a client account after the matter has been completed.
- 7** Describing profit costs as disbursements including charging for telegraphic transfers when these are made electronically at no cost.
- 8** Designated deposit accounts being excluded from both the ledger and reconciliations.
- 9** Overdrawn client ledger accounts. This can arise if a cheque is drawn against a banking which has not cleared. If the client's cheque is dishonoured a debit balance will arise unless the bank has instructions to charge such unpaid items to the office account.
- 10** Credit balances on office ledgers. Although not a breach in itself, they should be regularly reviewed to ensure that they do not represent client money incorrectly held in office account.

With SAR's so rigidly defined it is not difficult for a firm to find that it has breached one or more of them over the course of a year. Robust systems, an awareness of common problem areas and professional advice will help to ensure that the rules are followed.

# in brief.

## Legal aid cuts threaten law centres

Many law centres could close when the Government's plans to cut legal aid by 10% go ahead, solicitors have claimed. A third of law centres rely on legal aid for over 60% of their revenue, giving rise to fears that they will struggle following the cuts.

In addition, the Ministry of Justice (MoJ) has removed welfare, debt, employment and housing advice from the scope of legal aid provision, which law centres fear will reduce their client numbers dramatically. The MoJ has provided a £20 million transitional fund for law centres, but legal experts have warned that closures could lead to reduced access to justice for disadvantaged groups.

There is more on this story at: <http://snipurl.com/vqkny>

## Lawyers criticise telephone advice plan

Access to publicly-funded legal advice in community care law will only be available through a telephone gateway, the Government has announced.

The gateway would be used to determine whether clients seeking advice would be eligible for legal aid, and if so, whether it would be delivered by telephone or in person.

However, the Public Law Project (PLP) has requested permission to apply for a judicial review of the plan. The PLP argue that vulnerable groups most in need of the service could be prevented from accessing legal aid because they will have difficulty communicating their issues by telephone.

There is more on this story at: <http://snipurl.com/zenic>

## Advocates raise concerns about QASA

Contrary to initial information, the Quality Assurance Scheme for Advocates (QASA) will be implemented in stages but no pilot will take place, the Joint Advocacy Group has announced.

In addition, the Criminal Bar Association (CBA) raised concerns that silks are not provided for in the payment structure for Crown court advocates under QASA, and would no longer receive payment for publicly-funded defence cases. However, the Solicitors Association for Higher Court Advocates (SAHCA) has stated that silks are included in the QASA payment structure, and a separate category for silks is being considered in a consultation.

There is more on this story at: <http://snipurl.com/10rjnd>

## Legal Services Board to investigate Will-writing

A statutory investigation into consumer protection in the Will-writing, probate and estate administration markets has been launched by the Legal Services Board (LSB).

The investigation is a result of research conducted by the LSB in 2010, which revealed that many Wills contained basic errors and often failed to reflect the client's wishes.

The investigation will identify any necessary changes to the regulation of the three markets and examine the possibility of making them reserved activities, whereby only people authorised by an approved regulator could carry them out.

There is more on this story at: <http://snipurl.com/w3db9>

## Outcry over delayed legal aid payments

Criminal barristers are experiencing significant delays in receiving payment of legal aid fees from the Legal Services Commission (LSC). The LSC took over the responsibility for administering payments from Her Majesty's Courts Service (HMCS) in April. Previously, the timescale for receiving payment was 28 days, but under the LSC administration some barristers report that they have waited up to four months.

The LSC admitted that they were outside of their target of eight weeks for processing claims, and were training additional staff to clear the backlog.

There is more on this story at: <http://snipurl.com/yz8u1>

## Law firms must merge to compete, experts claim

A third of law firms either merged with another firm or took over a department in another firm in the first half of 2011, according to research by the Law Consultancy Network (LCN). This had increased from 20% in the second half of 2010 and 13% a year ago.

The study revealed that larger firms were more likely to merge, with 41% of firms with more than ten partners stating that they were likely to do so, compared with only 14% of those with fewer than ten partners.

Andrew Otterburn of LCN claimed that this trend is likely to accelerate in the future and advised firms to identify appropriate merging opportunities to build competitiveness.

There is more on this story at: <http://snipurl.com/vlyi6>

# profit improvement programme

The UK200Legal Group is pleased to announce the issue of a revised and updated Law Society accredited training course, Profit Improvement Programme for Solicitors (PIPS). The three hour interactive training seminar has been used throughout the Group in the last five years and has been well received by those partaking in the workshop.

In such difficult times there is agreement throughout the sector that solicitors firms from sole practitioners to ten partners need to be financially astute and ensure that all fee earners and administrative staff alike are

aware of the effect that the actions can have on the financial success of the business. The UK200Legal Group branded PIPS does just this. It involves the delegates in a partly 'revision' trip through financial awareness to a comparison of headline statistics achieved by the UK200Legal Group benchmarking survey.

The seminar concludes with open discussion regarding the strengths and weaknesses of individual firms encouraging the participants to be open and frank with their input.

Equity partners are encouraged to be more inclusive in the manner in which they run their individual practices and the seminar leads to a review of the most recent forecasting tool **Profitwatch**. This is an exclusive modelling tool for solicitors developed by the UK200Legal Group and as a

follow up to the seminar participants are encouraged to consult with out member firms (whether existing clients or not). The benefits are that equity partners and practice managers can model the business given decisions made at the seminar and beyond with a forecasting model that can be altered on a rolling basis to take account of trading conditions.

In these testing times can solicitors' firms ignore the opportunity to work with industry specialist accountants who are able to assist with strategic plans? The day of the old retained firm accountant has passed and, we believe, that an industry specialist accountant who is familiar with the legal profession should become an essential part of any progressive legal practice.

Contact us for more information.

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[www.uk200group.co.uk](http://www.uk200group.co.uk)

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## UK200Legal Group and PI

Lockton are prime partners and have worked with UK200Group advising on Professional Indemnity (PI) and related issues for more than 20 years, as Lockton or under their predecessor names. We advise accountant members on their own professional indemnity position, but also offer advice to their professional clients on insurance related matters.

You may be aware that insurance for Lawyers is currently due on the 1 October each year, this provides a concentrated market reaction and this year the analysis of perceived risk has altered with the recession, the industry having seen substantial claims and some very established large firms fail. Lockton are involved with the legal group regarding the management of risk for the legal sector, the purchase of indemnity for Lawyers being such a significant factor on their balance sheet.

The minimum terms imposed on Insurers by the Law Society are stringent and the whole industry have experienced significant bad

debts from this sector, Insurers need to be comfortable not only that they operate good risk management practice, but that they can meet the current renewal premium, their excess' in the event of a claim and should the company fail their premium commitment for 6 years run off.

In view of the above, as part of the renewal process, insurers have requesting more financial detail and some have wanted the last report and accounts. The role of an accountant therefore is increasingly vital in establishing a solvent position so that their insurance broker can negotiate the best terms available.

Lockton have been involved with a number of solicitors over the past couple of years where member firms introduce the profit improvement program, reinforcing the importance of sound risk management practice which includes control of the finances and are happy to support clients who wish to be involved in this process.