

LAZ Conference & AGM 2011

Alternative Business Structures For Lawyers in England & Wales

Andy Unger
President of the South London Law Society

Current Structure of Regulation of Lawyers

Legal Services Board

www.legalservicesboard.org.uk

The Legal Services Board is the oversight regulator for the eight separate bodies named as Approved Regulators in the Legal Services Act 2007.

Approved Regulators

Solicitors

[Law Society](#)

[Solicitors Regulation Authority \(independent regulatory body of the Law Society\)](#)

Barristers

[Bar Council](#)

[Bar Standards Board \(independent regulatory arm of the Bar Council\)](#)

Legal Executives

[Institute of Legal Executives](#)

[ILEX Professional Standards Board \(independent regulatory arm of the Institute of Legal Executives\)](#)

Licensed Conveyancers

[Council for Licensed Conveyancers \(regulatory body for Licensed Conveyancers\)](#)

Patent and Trade Mark Attorneys

[Chartered Institute of Patent Attorneys](#)

[Institute of Trade Mark Attorneys](#)

[Intellectual Property Regulation Board](#)

Law Costs Draftsmen

[Association of Costs Lawyers](#)

[Costs Lawyer Standards Board](#)

Notaries

[Master of the Faculties](#)

The following are listed as Approved Regulators in relation to reserved probate activities

only:

[Institute of Chartered Accountants in Scotland \(ICAS\)](#)

[Association of Chartered Certified Accountants \(ACCA\)](#)

The Legal Ombudsman

Deals with all service complaints about lawyers.

However, the Legal Ombudsman will only deal with complaints made on or after 6 October 2010. Complaints made before then were made to the Approved Regulators

The new Legal Ombudsman's website is: <http://www.legalombudsman.org.uk>.

Legal Services Act 2007

An Act to make provision for the establishment of the Legal Services Board and in respect of its functions; to make provision for, and in connection with, the regulation of persons who carry on certain legal activities; to make provision for the establishment of the Office for Legal Complaints and for a scheme to consider and determine legal complaints; ...

s1 The regulatory objectives

(1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of —

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

...

(3) The “professional principles” are —

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential.

S12 Meaning of “reserved legal activity” and “legal activity”

(1) In this Act “reserved legal activity” means —

- (a) the exercise of a right of audience;
- (b) the conduct of litigation;
- (c) reserved instrument activities;
- (d) probate activities;
- (e) notarial activities;
- (f) the administration of oaths. ...

Part 5 – Permitting Alternative Business Structures

Part 5 of the LSA 2007 allows for approved regulators (e.g. SRA) to apply for designation as licensing authorities. The Legal Services Board (LSB) will need to consider those applications and decide whether to recommend to the Lord Chancellor that they be designated.

From 6th October 2011, firms that are interested in developing new business structures will be able to apply to the relevant licensing authority for a licence. A body requires a licence to provide regulated legal services if any non-lawyer has an interest in that body as defined in the Act (material or controlled interest) or is able to exercise control over it.

Schedule 13, Part 1

3(1) For the purposes of this Part of this Act, a person holds a material interest in a body (“B”) if the person —

- (a) holds at least 10% of the shares in B

4(1) For the purposes of this Schedule, a person holds a controlled

interest in a body (“B”) if the person —

(a) holds at least x% of the shares in B ...

In sub-paragraph (1), “x” means such percentage as may be specified in licensing rules made by the relevant licensing authority under paragraph 2(2).

There are a number of safeguards which these new firms will have to fulfil in order to be licensed:

Firms wishing to combine legal and non-legal services will need to satisfy licensing authorities that they are competent to provide such services.

If a non-lawyer owns more than 10% of the body, they will be subject to a fitness-to-own test (i.e. whether their ownership is compatible with the statutory regulatory objectives and whether they are fit and proper to own the interest).

Licensing authorities are under a statutory duty to avoid conflicts of interest as far as is reasonably practicable. This includes not only individuals internal conflicts of interest but also conflicts of interest between licensing authorities and other regulators, e.g. Financial Services Authority (FSA)

Firms will be accountable to licensing authorities through a nominated Head of Legal Practice and Head of Finance and Administration.

In certain circumstances, external investors can be divested of their shares

Clients of licensed bodies will have the same rights to Legal Professional Privilege (“LPP”) that they would have had if they had retained a traditional law firm. The Act ensures that as long as communications with a licensed body are carried out through a lawyer or under the supervision and direction of a lawyer, then the ordinary rules of LPP will apply.

Legal Disciplinary Partnerships

On 31 March 2009, provisions in the Administration of Justice Act 1985, the Legal Services Act 2007 and amendments to the Solicitors Code of Conduct came into force to permit LDPs. These changes enabled firms to appoint non-solicitor lawyers and non-lawyer managers.

An LDP is a form of recognised body providing legal services where the owners and managers are not exclusively: solicitors of England and Wales, registered European lawyers (REs) and registered Foreign Lawyers (RFLs).

ABS/Multidisciplinary Practice – What does the future hold ?

Clementi Review & Tesco's Law -

www.lawsociety.org.uk/newsandevents/news/view=newsarticle.law?NEWSID=244665

Law Society's view - www.lawgazette.co.uk/news/society-votes-sra-regulate-abss

Co-operative Funeral Services - www.lawgazette.co.uk/news/nothing-cards-abs-era-says-co-op

WH Smiths and Quality Solicitors - www.lawgazette.co.uk/news/qualitysolicitors-whsmith-tie

Outcomes Based Regulation –

www.sra.org.uk/consultations/achieving-right-outcomes/