

Legal Services: removing barriers to competition

Formal Response by Cornwall Council in relation to the Ministry of Justice's Consultation Legal Services Act 2007

The Council has considered the MoJ's consultation paper published in July 2016 entitled '***Legal Services: removing barriers to competition***'

The Council is pleased that the government is considering removing barriers to entry for alternative business models in legal services. Within the context of local government very few local authorities have set up ABS models to provide legal services with the exception of councils like Harrow, Barnet, Essex, Northampton and Cambridgeshire. Cornwall believes that many authorities have been put off developing their own ABS models because of the real barriers faced in terms of disproportionate licensing requirements and regulatory burdens imposed by the Solicitors Regulatory Authority which adds significant cost and delay to the process and effectively acts as a deterrent.

The Council supports any proposals for changes that would, if made, reduce barriers to the licensing of, and regulatory burdens on, legal services businesses that are licensed as ABS, bringing the legislative framework for these businesses more in line with that for other legal services businesses.

We believe this would open up the legal services sector to local government encouraging greater competition and affordable legal advice for consumers, particularly those in the wider public sector including third sector organisations, and housing associations, as well as other local government organisations to whom the ABS could market its services.

Cornwall supports the principal that there should be a strong, competitive legal services market in which innovative businesses, including local authority ABS models can flourish to ensure good quality, affordable legal services are accessible to consumers, while ensuring consumers and the public interest are protected by effective regulation.

Question 1: Do you agree with the proposal that there should not be a requirement to provide services consisting of or including reserved legal activities from a practising address as currently required by paragraph 15 of Schedule 11?

Yes we agree. The ABS should have flexibility in terms of where it is able to provide reserved legal activities from, particularly in relation to proposed local authority ABS models which may end up acting for a number of local authorities and other public sector bodies through shared service arrangements that may well see teams of lawyers co located across a number of regional/national offices. There is also likely to be a greater proportion of those reserved legal activities provided through a web based solution as we seek to embrace more innovative and cost effective ways of working.

Question 2: Do you agree with the proposal that:

- a) **the requirement for an ABS to have a practising address in England and Wales is retained in paragraph 15 of Schedule 11 but Licensing Authorities may waive this requirement or may make licensing rules enabling them to waive this requirement; or**
- b) **alternatively, paragraph 15 is replaced with a power enabling Licensing Authorities to make licensing rules about addresses?**

We agree with the proposition in question 2(a) but disagree with the alternative propositions in question 2(b) on the basis that it does not appear to us that by removing the details from the Act that this would necessarily result in significant changes to the licensing rules.

Question 3: Do you agree with the proposals to amend Schedule 13 to the 2007 Act and allow Licensing Authorities to make their own rules around ownership of an ABS, and to impose a statutory obligation on the LSB to provide guidance regarding ownership?

We agree that Schedule 13 is lengthy and prescriptive, requiring Licensing Authorities to take an inflexible approach, including requiring them to make what they consider to be unnecessary checks on non-lawyer owners and managers who have no real control or influence over an ABS, simply because they fall within the criteria for checks. In local government this could apply to checking all councillors just because the Council is a 100% shareholder. We therefore support this proposed amendment.

Question 4: Do you think amending Schedule 13 and giving Licensing Authorities greater discretion in deciding on the necessary checks for licensing, would encourage more applications from businesses to become ABS?

Yes we agree because it will be seen as a significant reduction in bureaucracy, cost and time.

Question 5: Do you think giving Licensing Authorities greater discretion would reduce the timescales and cost of the licensing process, and if so, by how much?

As per our response to 4 above we agree but it is difficult to quantify by how much. We would hope that the average time for approving an ABS from application to authorisation could be reduced by at least a month from the current 3 month target with the number of checks being reduced.

Question 6: Do you agree with the proposal to repeal section 83(5)(b) of the 2007 Act?

We support this proposal and agree that there is no additional benefit in having the separate requirement for Licensing Authorities to set out how they will improve access to justice in relation to individual applications for ABS licences.

Question 7: Do you agree that Licensing Authorities and ABS applicants would make savings in terms of costs, time and resources, if we were to repeal section 83(5)(b)?

We agree that such repeal would inevitably save cost and time for both the applicants ABS as well as for regulators in not having to provide and then consider the access to justice requirements

Question 8: Do you agree with the proposal to amend sections 91(1)(b) and 92(2) of the 2007 Act?

We agree with the suggested changes which would replace the current requirement to report "any" failure to comply with, or breach of, licensing rules to report "material" failures to comply with, or breach of, licensing rules.

Question 9: Do you agree with the proposal that regulators should provide guidance to businesses on how they define a "material" failure to comply with licensing rules?

Yes this will bring consistency of approach and avoid ambiguity which otherwise could result in reporting too much or too little.

Question 10: Do you agree that regulators and ABS businesses would make savings in terms of costs, time and resources if we were to amend sections 91(1)(b) and 92(2) as proposed, and if so by how much?

It is difficult to quantify what the actual savings would be but clearly there would be a significant element of time saved in not having to report every technical breach as well as the time saved by the SRA in not having to consider such breaches.

Question 11: Do you agree that the proposed changes to ABS regulation are sufficient to ensure a level playing field for entry to the market and regulation in the market for ABS and other firms? If not, what further changes do you think would be needed?

We agree that it is positive step forward but would not rule out the need for further relaxation in regulations going forward.

Question 12: Are there any further amendments that might be made to a specific provision of, or schedule to, the 2007 Act which deals with the regulation of ABS? If so, please explain why and where possible provide evidence to support your argument.

None as Cornwall doesn't currently operate an ABS.

Question 13: We would welcome additional data or evidence in relation to these proposals, in the light of which the cost assessment will be revised and published with the government's response to this consultation.

See response to 12 above.

Question 14. We welcome your views in terms of any potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence.

We are not aware of any such equality impacts.