

# Alternative medicine

Despite ambivalence from some law firms, when “ABS day” arrives, David McIntosh is convinced there will be a glut of applications

**THE CONFUSION OVER** if, when and in what form alternative business structures (ABSs) might provide another way for solicitors to practise is starting to clear.

The government refused to authorise multi-disciplinary partnerships, with solicitors in the majority but including other disciplines as partners, when the Law Society made a request more than five years ago. It also refused Sir David Clementi’s recommendation that the move towards full-blooded ABSs, in which solicitors could be in the minority, should be preceded by authorising and piloting the more limited ‘solicitors-plus’ approach.

Instead, bowing to the lay consumer-led lobby, the government set its mind on moving as quickly possible to the full model without realising this could not be achieved without a much detailed preparation for a licensing regime ensuring ABSs, like our current law firms, would be properly regulated in the public interest and not undermine (by wiping out small, local firms) access to justice.

The effectiveness of the all-party select committee, chaired by Lord Hunt of Wirral, the lobbying of the Law Society and City of London Law Society, and the time needed by the Solicitors Regulation Authority to prepare rules for ABSs, has led to the government belatedly realising that it is being too hasty. It has amended the Legal Services Bill so as to permit law firms, hopefully by the end of 2008, to have up to 25 per cent non-lawyer partners limited to offering services ancillary to the work of a legal practice.

Legal disciplinary practices between different types of lawyers, which do not require licensing, will also become a possibility by the end of next year, once the SRA has created the rules for them. It has accepted that far more preparation is needed for full ABSs, which are unlikely to be with us until 2011.

There is widespread support within the major City law firms, and beyond, although perhaps with less enthusiasm, for the ability to allow financial

directors and other senior staff into partnership. Mixed legal and legal multi-disciplinary practices are, as the Law Society and Sir David Clementi recognised some time ago, a safe step in the right direction. The solicitors profession will quickly adapt to these new opportunities and legal practice, as we know it, will continue with, hopefully, improved management and increased competitiveness.

But it is hard to understand why the SRA needs more than a year to decide how to license this simple step, which involves only assessing the fitness of the non-solicitor partners. The preliminary work on this ought to have been completed by now.

## Moving the goalposts

This half-way step will not open the door to insurers and supermarkets setting up their own legal practices. Legal executives and barristers will, however, be able to run their own law firms separately or together, with only one solicitor

partner required to provide the necessary legal multi-disciplinary status.

The debate over whether and to what extent full ABSs should be welcomed will continue and heighten once the SRA begins its consultation regarding how they are to be licensed and regulated. As “ABS day” approaches, there will be some solicitors worried about the likely impact on their livelihoods. Not least many of those who rely upon a diet of bulk commodity-type business such as low-value insurance claims defence work or routine domestic conveyancing. This type of repetitive work, which lends itself to a conveyor-belt approach, is just the sort of business which insurers, motoring associations, building societies, banks, supermarkets and others (subject to their meeting the yet-to-be-designed SRA licensing criteria) could Hoover up through creating their own ABSs.

This has been foreseeable and there has been considerable time for far-sighted law firms exposed to this risk to have protected themselves against the threat.





In 2001, I used the occasion of my speech as president of the Law Society, at its annual conference in Birmingham, to issue this warning: "Change provides huge opportunity – but only for those who can see it coming and who are willing to face up to it. Our clients of the future are going to pay only for legal services they cannot obtain from non-lawyers. I believe the future for solicitors lies with work where we can add the extra value which solicitors uniquely bring. This means we need to major on the work that is of such importance, or value, to our clients that they will choose – and pay – for a solicitor to do it. Commoditised work, by itself, is unlikely to provide many of us with a bright future. The challenge for all of us is to adapt to meet clients' changing needs in viable ways."

I added that this was "why the Law Society is exploring how to facilitate multi-disciplinary practice". Full ABSs seemed less of a prospect then!

Those law firms which have commoditised their own approach to handling bulk business in low-cost premises with high staff-to-supervising-solicitor ratios, and which still profit from small margins on large tranches of work, have something which they could easily turn into their own ABS. A few firms are advanced in planning for this.

But some of these arrangements, even if modified into ABSs, might not survive. For example, an insurer which provides a firm of solicitors with bulk claims defence business might decide (with the encouragement of its accountants) that the modest 10 per cent profit being

generated could be saved by cutting off the flow of work and handling it "inside" through its own ABS. It will have created a buyers' market for itself if it then offers to buy the firm's bulk-business department.

I do not suggest that all insurance defence practices are vulnerable. The one I used to lead and other well-managed insurance firms have seen the writing on the wall and protected themselves against what has been conveniently described as "Tesco law". There will, however, be victims of the onset of ABSs and they will not be confined to insurance defence lawyers.

### Frustrated by delay

I know from my closeness to them that among the City of London Law Society's corporate member firms there are several, frustrated by the delay in making way for full ABSs. Others, while welcoming the ability to become multi-disciplinary, are unenthusiastic with regard to the advent of full ABSs. They are concerned that these new vehicles will give non-lawyers a competitive edge, and do not appear to be thinking of ABSs as suitable for their own businesses.

But that may change when full ABSs become a reality. The options for external financing will be wide. Flotation on the stock market will be a possibility, as will selling a percentage to external investors and merging with a non-legal business.

Furthermore, ABSs owned by and running alongside large traditional law firms may become attractive homes for conducting some, or all, of those firms'

current "non-reserved" business and employing the necessary qualified staff without the need for each of them to have a practising certificate. The "reserved" work could be confined to their traditional practice, which would continue in reduced form with practice fee-paying responsibilities for fewer solicitors.

I am unaware of any practice fee-saving plans of this type, but I do know that despite the national Law Society's efforts on behalf of large corporate law firms, some do not believe that they receive sufficient value for the aggregation of practising fees they pay. Unless, by then, these sceptical firms feel they are receiving value for money from the representative Law Society and the SRA, the benefits of continuing entirely as a traditional regulated law firm may wane. This is, despite the current value to many law firms of being able to point to all of its partners and the firm having the distinction of being well-regulated "solicitors" when seeking establishment and practice rights abroad and when competing against less regulated legal business suppliers.

I am, however, convinced that when the time comes, there will be a glut of ABSs. Some will have traditional legal practice owners attracted by the ability to develop their businesses in a different and commercially attractive way.

◆ David McIntosh is a consultant on solicitor's regulation at City firm Fox. He is chairman of the City of London Law Society and an ex-president of the Law Society