



CRUCIAL VOTE ON SRA REGULATION OF ABSs

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In March the Law Society Council will have to make the most important decision of recent years. It has to decide whether the Solicitors Regulation Authority ("SRA") should apply to the Legal Services Board ("LSB") to become a regulator of alternative business structures ("ABSs").

Solicitors could already be permitted some confusion. The SRA is promoted as the independent regulatory arm of the Law Society, but part of the Law Society it nonetheless remains. Not for the first time since it was hived off as a separate unit the SRA again finds itself not quite as independent as some might wish. On this occasion the Law Society was advised by Leading Counsel that it was for the Law Society, rather than the SRA Board, to decide whether this application should be made. It was also advised that it was entitled to reach this decision in the interests of the profession on representative grounds as opposed to regulatory grounds.

The vote has to be "yes" or "no". If the vote is "no" the LSB will regulate ABSs directly. The profession will still pay 90% of the cost. Those who opt for an ABS will be regulated by the LSB so a significant part of the profession could be lost to the SRA and the Society.

If the vote is "yes", the SRA will have the chance to lead the way in regulating the delivery of legal services and imposing the highest standards.

As with so many such decisions in recent years there are complexities beyond the immediate issues. The Law Society is recognised beyond these shores in the legal sector as a brand and our professional qualifications are recognised worldwide. Whether this will still be the case if a multiplicity of regulators develops is far from certain.

A further international consideration is that many of the largest firms have global partners from other jurisdictions who could not practise in any ABS structure. No other jurisdiction is intending to dilute its monopoly on the delivery of legal services. We are

viewed as misguided by our continental colleagues. Even the Americans in the free trade centre of the world would not entertain the route that we are taking.

Interestingly, the Council for Licensed Conveyancers ("CLC") has already applied to the LSB for approval as a licensing authority. The application is limited to its current reserved activities i.e. conveyancing; probate and the administration of oaths. However the CLC has also submitted a second application for two further reserved activities namely rights of audience and the right to conduct litigation. The new CLC Handbook runs to 187 pages and provides for an outcomes focused system of regulation as well as a Compensation Fund. It is very similar to the SRA Handbook. The CLC's applications are well made and worth a read on the LSB website. However the CLC currently only deals with 1103 licensed conveyancers, two thirds of whom are employees so it is on a very different scale to the SRA

Where does this leave the public? As a recent survey found, consumers were "shocked" to discover not all legal service providers are regulated. The key issue for the LSB should therefore be regulation of all legal services not just reserved activities. Will writing is a prime example of an area that needs to be brought under the umbrella of regulation.

The public, in my view, could be in a more confusing place than they were before David Clementi came striding across the regulatory horizon in 2003. His main complaint was that the system of regulation was too complicated. Quite how these current deliberations represent simpler regulation is not immediately clear.

The Council has a very difficult decision to make. If you have a view please contact your Law Society representatives Malcolm Fowler or Derek French so they can express your views at the crucial meeting in March. ■