

## **Annex B: Multi –disciplinary practices: Initial impact statement**

1. This impact statement comprises an initial assessment of the package of reforms set out in our proposed approach to the authorisation of MDPs (Option 1) against our regulatory objectives, as also considered in light of our public sector equality duty.
2. Overall whilst we consider that the proposed changes should remove potential barriers to proportionate regulation and to market entry, we cannot quantify the extent to which applicants have been deterred by the current rules, or predict the increased take up that may result from them. This means that we cannot quantify the impact in advance, although we have sought to identify key risks and to introduce controls where appropriate.
3. However, we invite the views of respondents on potential impacts, and would welcome any data or research which they consider relevant.

### **Protecting and promoting the public interest;**

4. We do not consider that the effect of these proposals, which will open up new types of practice, will impact adversely on particular communities or locales. Making it easier for reserved services to be provided together with other professional services - including with those with links with local communities - may broaden access, including for more diverse groups of clients. Opening up the market to new participants and to existing firms seeking to expand their business without over burdensome regulation may therefore have a positive impact on communities.

### **Supporting the constitutional principle of the rule of law:**

5. It is not our view that allowing some areas of non-reserved legal activity to be delivered outside of SRA regulation will adversely impact on the rule of law. These activities are, in general, already being delivered by organisations outside of LSA regulation. Our proposals will assist MDPs to add reserved services and become ABSs and thus bring them within the ambit of the LSA.

### **Improving access to justice:**

6. Our view is that our proposals taken together are likely to increase access to justice by increasing market entry and new forms of practice. The range of services offered by MDPs should ultimately provide greater choice for consumers.
7. This may be particularly the case for small businesses who, at present, do not fully access the legal services, and when they do, 'seek to "muddle through" rather than obtain advice since seeking formal advice is perceived as expensive, serious and a last resort'<sup>1</sup>.
8. A survey carried out as part of the LSB evaluation of changes in competition in different legal markets published in October 2013<sup>2</sup> showed that while ABS organisations provide

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<sup>1</sup> Research note, The legal services market, Legal Services Board, August 2011

services to a wide range of consumers, they are more likely to serve business consumers as opposed to individuals.

### **Protecting and promoting the interests of consumers:**

9. By promoting our other objectives, including access to justice and competition, we will be promoting the interests of consumers. Removing barriers to authorisation will assist in achieving a legal services market driven by the needs and preferences of consumers rather than by dictating the structure of firms in a way that has historically inhibited innovation and presented barriers to entry.<sup>3</sup> For those that have an issue that involves multiple strands the ability to instruct a one-stop-shop that has the capability to manage all issues in one service will be an important benefit, and may lead to reduced costs of services. Likewise, consumers will be able to obtain legal services from firms where they have an existing relationship in other areas such as accountancy services.
10. Our proposal contains proportionate protections for consumers, including the suitable external regulation requirements.
11. We have identified that there are potential risks with MDPs of consumer confusion over the extent of regulation, and possible detriment arising from that confusion. We have included the principle that MDPs will need to have procedures in place to ensure that this detriment does not arise. We believe that this objective will be particularly promoted by our focus in relation to both MDPs and 'separate businesses' on how services will look to the consumer rather than on the technicalities of whether or not the services are delivered through separate legal entities.
12. Whilst reducing conflict and duplication of regulation should simplify the position for MDPs, our approach to issues such as professional indemnity insurance<sup>4</sup> aims to ensure that there are no inappropriate gaps arising between regulatory boundaries.

### **Promoting competition in the provision of services such as are provided by authorised persons:**

13. These proposals should promote competition by removing restrictions on entry to the market and on the structures of firms that can be authorised. Making it easier for firms to form an MDP providing a number of professional services in a 'one-stop-shop' may open up an attractive option for growth. The effect of s1 LSA is that the duty to promote competition includes non –reserved legal activities and our proposals will facilitate these activities being provided by entities that also provide reserved services

### **Encouraging an independent, strong, diverse and effective legal profession:**

14. These proposals will provide wider opportunities for lawyers to work with other professionals, and give greater facility to attract external investment in ABS structures. We also consider that Recognised Bodies should be able to offer a wider range of services should they choose to do so – this will provide opportunities to compete and

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<sup>2</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>

<sup>3</sup> Research note, The legal services market, Legal Services Board, August 2011

<sup>4</sup> Paragraph 59 of the consultation document

increase their client base. This will have a positive impact on consumers, and specifically small business, as firms compete for clients.

15. We do not consider that working in an ABS or MDP structure is in itself a risk to the independence of legal professionals given the protections that the LSA and the regulations and rules made under it have put in place. The work carried out or supervised by authorised persons will continue to be SRA regulated<sup>5</sup>.
16. In our Risk Outlook for 2013<sup>6</sup>, we identified the lack of a diverse and representative profession as one of our key risks – this arises from issues such as a lack of diversity at senior positions in many firms, and a slight under representation of practising certificate holders from BME groups.
17. These proposals are part of a range of measures (including our Training for Tomorrow initiative<sup>7</sup>) to remove unnecessary regulation and break down potential barriers to entry.
18. Sufficient data does not yet exist to consider the impact of ABSs generally on the legal profession or indeed of MDPs in particular. The LSBs initial discussions with stakeholders in 2011 indicated that the general feeling at that time was the best assumption was that the introduction of ABS would have a neutral impact on diversity of the legal profession as there was insufficient evidence that ABSs would have either more of a positive or more of a negative impact.<sup>8</sup> The LSB published a baseline report on market impacts of legal services in October 2012<sup>9</sup> and will publish further reports to monitor the impacts.
19. BME solicitors are disproportionately represented in small solicitor practices<sup>10</sup>. We do not have the data to indicate whether more MDPs being authorised would impact on the numbers of such firms. The LSB's October 2013 report<sup>11</sup> showed limited changes in market concentration since the introduction of ABSs – except in the personal injury sphere where there are other important factors at work such as the Jackson reforms and the referral fee ban. However, in so far as the proposals will allow practice in 'non - traditional' ways, they may increase opportunities for BME solicitors.

### **Increasing public understanding of the citizen's legal rights and duties;**

20. Increasing consumer choice and removing unnecessary restrictions on business models is likely to promote this objective.
21. The survey contained in the LSB's October 2013 report showed that ABSs appear to use technology to deliver services to a greater extent than other firms do. In all, 91% of survey respondents indicated having a website that they used to deliver information and other

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<sup>5</sup> In the case of the limited mixed team exception paragraph x of the consultation document solicitors remain subject to SRA regulation.

<sup>6</sup> <http://www.sra.org.uk/solicitors/freedom-in-practice/ofr/risk/outlook/risk-outlook-2013-2014>

<sup>7</sup> <http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page>

<sup>8</sup> Research note, The legal services market, Legal Services Board, August 2011

<sup>9</sup> [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20121023\\_evaluation\\_baseline\\_report\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20121023_evaluation_baseline_report_final.pdf)

<sup>10</sup> 50.5% of BME solicitors work in sole practices or firms with 2 to 4 partners compared to 28.7% of White European solicitors and 30% of BME solicitors work in firms with 26 or more partners compared with 42.6% of White European solicitors.

<https://research.legalservicesboard.org.uk/wp-content/media/Review-of-published-evidence-on-the-equality-of-pay-in-legal-services-Final.pdf>

<sup>11</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>

services to their customers. This compared to just 52% of other solicitors firms having a website they used for advertising, and 6% using legal networks websites.<sup>12</sup>

**Promoting and maintaining adherence to the professional principles:**

22. We are proposing a number of measures in support of this objective. The SRA will continue to authorise the whole entity – the licensed body, managers, employees and owners will continue to have the general obligations set out in the LSA and in the SRA Handbook – such as the duty not to do anything that could cause the licensed body to breach its regulatory arrangements and duties to comply with the SRA Principles 2011.
23. The duty to maintain client confidentiality in relation to information provided in respect of legal services will apply across the entity.
24. Our requirements for suitable external regulation include an assessment of whether those arrangements will ensure that the SRA Principles 2011 will be complied with. Reserved services including litigation and exercising rights of audience will continue to be regulated by the SRA.
25. According to the survey in the LSB's October 2013 report<sup>13</sup>, reported complaints received, resolved, and referred to the Legal Ombudsman compared to turnover show that LDPs and ABS had better complaints resolution ratios than traditional practices.
26. We are focussed on the need to make sure that the re-definition of boundaries with non SRA regulation within an MDP does not make enforcement more difficult. We will discuss these issues with other key regulators to help ensure effective co-operation and information sharing.

*Consultation Question: Do you agree with our initial analysis of the impact of the proposals in Option1, and are there any other impacts or available data or research that we should consider?*

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<sup>12</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>

<sup>13</sup> <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>