

Workshop -
Impact of LASPO on SRA's regulatory
approach

ABSs and new entrants: the key issues

Tracy Townsend and Dawn Cleaver
Senior Exceptions Officers, SRA
19 November 2012

Agenda

- Brief recap on ABSs
- Case studies and concerns
- Any questions?

Licensable Bodies (ABSs) – The Basics



- A Licensable body must have
 - At least one lawyer manager;
 - At least one non-authorized manager or interest holder; and
 - Provide reserved legal activities

How can I prepare to become an ABS?



- Before applying to become a Licensed Body you need to:
 - Be familiar with the Principles, Code, PFRs, Auth Rules, Accounts Rules
 - Identify the relevant reserved legal activities
 - Prepare your business strategy/plan and financial forecasts
 - Have clear governance and management structures
 - Identify the owners, managers, COLP and COFA
 - Be able to obtain professional indemnity insurance
 - Read the ABS section on the SRA website.

Is ABS the answer?



- ABSs may bring innovation but are subject to our regulatory arrangements
- The following case studies present significant concerns

Is ABS the answer?

What concerns arise from the plans put forward by the proposed new entrants?

- Case Study 1 - Help Law - CMC owned
- Case Study 2 - Green Law - Insurer JV (1)
- Case Study 3 - Insure Law - Insurer JV (2)

Is ABS the answer? Help Law



Case Study 1 - Help Law

A Claims Management Company, “Access”, proposes to own an ABS called “Help Law”. Access also arranges for car hire and arranges vehicle repairs. No payments pass between Access and Help Law (although Access will be entitled to share dividends).

Proposed Business Plan

- Personal injury client approaches Access who refer client to Help Law.
- Help Law contacts insurer and obtains an admission of liability.
- The information is passed back to Access.
- Access arranges car hire and vehicle repair.
- Client instructs Help Law to claim car hire and vehicle repair costs from insurer.
- Access obtains referral fees from car hire and garages to whom the work is referred.

Is ABS the answer?
Help Law – CMC owned



What concerns arise from Help Law's plans?

Is ABS the answer? Help Law – CMC owned



Main concerns include

- **Upholding the rule of law:** are the referral fees paid to the CMC prohibited referral fees? Referrals arising out of ancillary claims are caught by s56(2) LASPO.
- **Protecting consumer interests:** the CMC may be a separate business carrying out prohibited separate business activities (Chapter 12 O(12.1/12.2) of the SRA Code of Conduct 2011)
- **Acting in client's best interests:** car hire and vehicle repair costs are/may be increased due to the CMC's involvement and so may be irrecoverable in their entirety from insurer.
- **Independence:** is this compromised due to the ownership of the ABS by CMC?

Is ABS the answer?

Green Law – Insurance JV (1)



Case Study 2- Green Law

Insurance company “Green” proposes to set up a joint venture with law firm “Bloggs & Co”, to be known as “Green Law” to carry out claimant personal injury matters.

Proposed Business Plan

- No employees at Green Law.
- COLP and COFA will also be employees of Bloggs & Co.
- All work will be done at Bloggs & Co's offices by Bloggs & Co's staff on Bloggs & Co's IT and telephone systems, using Bloggs & Co's office equipment but under the name of Green Law. 100% of the work under the name of Green Law will be outsourced to Bloggs & Co.
- Bloggs & Co will also be entering into an identical JV arrangements with insurance companies “Purple” and “Silver” (known as “Purple Law” and “Silver Law”).
- Bloggs & Co's staff will be working for clients of Bloggs & Co, Green Law, Purple Law and Silver Law at the same time.

Is ABS the answer?
Green Law – Insurance JV (1)



What concerns arise from Green Law's plans?

Is ABS the answer?

Green Law – Insurance JV (1)



Main concerns include

- **Upholding the rule of law:** are the referrals (outsourcing) caught by s56 LASPO?
- **Acting with integrity:** is this arrangement clear and transparent? Is this arrangement misleading?
- **Conflicts of interest :** how can conflicts checks be effective? Can the COLP and COFA properly discharge their duties?
- **Confidentiality:** how can clients' matters be kept confidential?
- **Client confusion:** indemnity issues - which legal entity does the client take action against? Are there likely to be disputes as to liability between the professional indemnity insurers of Green Law, Purple Law, Silver Law and Bloggs & Co?

Is ABS the answer?

Insure Law – Insurance JV (2)



Case Study 3 - Insure Law

Insurance Company “Insure” proposes to enter into a joint venture arrangement with a law firm, “Fred LLP”. The ABS is known as “Insure Law” to carry out claimant personal injury.

Proposed Business Plan

- Fred LLP will be supplying the necessary staff, systems and IT requirements as services to Insure Law.
- Fred LLP’s staff will be seconded into Insure Law, on a demand-driven basis, as Insure Law’s requirements develop over time and as more new clients are taken on.
- There will be sharing of premises , namely reception and meeting rooms.
- In addition, floors 1 and part of 2 are to be used by Insure Law; the remaining part of floor 2, as well as floors 3 and 4 are to be used by Fred LLP.

Is ABS the answer?
Insure Law – Insurance JV (2)



What concerns arise from Insure Law's plans?

Authorisation of new entrants- Insure Law – Insurance JV (2)



Main concerns include

- **Acting with integrity:** Does the client think that Insure Law is providing the services when, in fact, the client could have gone straight to Fred LLP? Are the “processes and procedures” imposed by Insure Law sufficient to allay these concerns ?
- **Conflicts of interests:** can effective conflicts checks be conducted?
- **Confidentiality:** can client confidentiality be properly maintained? Do the secondments properly protect client confidentiality and are they workable? What are the duration/length of the secondments?
- **Independence:** is Insure Law properly independent?
- **Proper standard of service:** do clients have the appropriate protection of s 190 LSA?
- **Upholding the rule of law:** what are the referral arrangements? Is there any payment for a referral?

Is ABS the answer?

Conclusions

- ü Structuring your ABS - think carefully
- ü Consider your business plan - is it SRA compliant?
- ü Referrals and outsourcing- are there any issues?
- ü Ascertain and address/mitigate the risks

Assistance:

- SRA website: www.sra.org.uk
- To contact us, please visit www.sra.org.uk/contact-us
- Pre-application engagement: email us at **abs@sra.org.uk**
- Respond to referral fees consultation by 18 December 2012

Any Questions?

