

## C: The Legal Services Act 2007

### C.1 Introduction

The Legal Services Act 2007 is included in this on-line chapter because, whilst it has had profound effects on the legal system and its personnel, it is of limited direct application to business law.

The provision of legal services in England and Wales has been subject to a radical reform through the Legal Services Act (LSA) 2007 which received Royal Assent on 30<sup>th</sup> October 2007. It received its commencement order from October 2011 and aimed to reform the way that legal services were provided. It opens up the range of providers who may supply legal services, hence consumers will not be required to choose from firms of solicitors' practices. Rather, there are a range of in-house and more accessible legal advisors and this, it is intended, makes for a more innovative, competitive and business-minded model of legal service.

Prior to the enactment of the LSA 2007 there were various bodies have regulating authority over the legal services market. It was felt that this was confusing for the public (consumers in particular) as the providers of legal services included solicitors, legal executives, barristers, conveyancers, notaries, experts in areas such as trademarks and so on. These bodies were regulated (often) by different authorities and this was not a particularly effective or satisfactory system. Hence the need for a review of the providers, and of the regulatory authorities.

### C.2 Important Areas of Development

The LSA 2007 provides for many changes to the provision of legal services. Some of the more significant in relation to business law include:

- The establishment of a single supervisory body to oversee the activities of 'approved regulators' - known as the Legal Services Board. This is independent from the Law Society and Bar Council (which regulated the activities of solicitors and barristers) which are now referred to as 'front line' legal regulators.<sup>1</sup>
- An 'Office for Legal Complaints' which will be a single entry point of complaint for consumers in relation to legal services.
- Very significantly, it establishes a system of 'Alternative Business Structures.' These will make changes to the way legal services are provided, allowing lawyers to join non-lawyers in partnerships and so on.

### C.3 PART 1: Regulatory Objectives

Section 1 of the LSA 2007 established a series of 'regulatory objectives' which it intends to provide. These are listed as:

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;

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<sup>1</sup> Other regulators include CIPA, ILEX and so on.

(h) promoting and maintaining adherence to the professional principles.

## C.4 PART 2: Legal Services Board

To further the ability to regulate the industry and develop standards identified in s. 1, the LSA 2007 has established the Legal Services Board (LSB). Specifically the LSB is charged with assisting in the maintenance and development of standards in relation to those who can offer 'reserved legal services' – namely the legal profession:

- (4) (a) the regulation by approved regulators of persons authorized by them to carry on activities which are reserved legal activities, and
- (4) (b) the education and training of persons so authorized.

The LSB is also required to adhere to general principles of good corporate governance.<sup>2</sup> As such the LSB must produce an annual report that must deal with:

- (2) (a) the discharge of the Board's functions,
- (b) the extent to which, in the Board's opinion, the Board has met the regulatory objectives, and
- (c) such other matters as the Lord Chancellor may from time to time direct.

The report is to be passed on to the Lord Chancellor who must lay the report before Parliament.

The LSB will have the duties and powers of authorizing the bodies to be approved regulators of legal services. It will authorize the bodies to license Alternative Business Structures. It may direct approved regulators to take particular action, applying sanctions where the instruction has not been followed. It is also empowered to make recommendations to the Lord Chancellor regarding which services should be reserved services (and thereby subject to compulsory regulation).

The LSB is the body that supervises the approved regulator (such as the Law Society). In this function, it operates with awareness of the need for unnecessary interference and will attempt to resolve disputes informally in the first instance. Where this is ineffective, it will exercise its powers but again, this action will only be taken where, for example, the decision / actions of an approved regulator were plainly unreasonable.

The LSB is also charged with establishing the Consumer Panel.

## C.5 The Consumer Panel

To ensure the interests of consumers are represented, the LSB must establish a consumer panel. The constitution of the panel will include 'such consumers, or persons representing the interests of consumers, as the LSB may appoint with the approval of the Lord Chancellor.'<sup>3</sup>

## C.6 PART 3: Reserved Legal Activities

The LSA 2007 provides that some services may only be provided by lawyers, or in other instances by notaries and commissioners for oaths. These are outlined in s. 12(1) which establishes the 'Reserved Legal Activities' as:

- (a) the exercise of a right of audience (**only<sup>4</sup> carried out by lawyers**);
- (b) the conduct of litigation (**only<sup>5</sup> carried out by lawyers**);

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<sup>2</sup> Section 6.

<sup>3</sup> Section 8(2).

<sup>4</sup> Subject to minor exceptions.

<sup>5</sup> Subject to minor exceptions.

- (c) reserved instrument activities;
- (d) probate activities (**only carried out by lawyers**);
- (e) notarial activities (**may be carried out by notaries**);
- (f) the administration of oaths (**may be carried out by commissioners for oaths**).

## C.7 PART 5: Legal Disciplinary Practices

The change to the way providers of legal services are managed and operate is likely to be important to businesses and consumers. Prior to the LSA 2007, there was strict regulation of how lawyers could work and which forms of business under which they could operate. The advent of Legal Disciplinary Practices will enable solicitors and barristers to work in the same firms, further it will also allow up to one-quarter of the staff to be non-legally qualified. However, up to 75% of the owners / managers must be legally qualified and hold at least 75% of the shares / voting rights. The Legal Disciplinary Practices become Alternative Business Structures from 2011.

Alternative Business Structures (ABSs) will be able to work in trading structures such as partnerships, Limited Liability Partnerships and companies. This will enable lawyers and non-lawyers<sup>6</sup> to create multi-disciplinary partnerships who work together providing the reserved legal services (insofar as it is licensed by an approved regulator) as well as other services, rather than the old 'partnership' model operated by solicitors' practices. Prior to the LSA 2007, solicitors<sup>7</sup> were only allowed to practice in firms wholly owned and managed by other solicitors or Registered European Lawyers. Each of the ABS will require a Head of Legal Practice and a Head of Finance.

Naturally, the reserved legal services aspect of the business will have to be carried out by the qualified lawyers. Why this is important is that many larger firms require much legal work and operate under regulation which requires expert legal advice. Businesses in the banking and insurance industry spring to mind when thinking of the firms who may take advantage of the ABS. The argument goes that much preparatory work / background checks and so on, traditionally undertaken by solicitors in the course of providing the service, will now be able to be performed by the non-legally qualified persons in the ABS. Hence, solicitors may face stiff competition from businesses who can provide a tailored service (with costs apportioned depending on which staff are actually working for the client in which aspect of the work). Further, some aspects of work – for example will writing – will be an unregulated practice area.

To ensure that competition is available, but also that standards are maintained and the consumer is protected at all times, a system of licensing will operate to regulate these providers. ABS will have to apply for a license to operate where a non-legally qualified person has a 'material interest' in the business or is in a position to control it, and it will have to prove it is competent to provide legal services. The non-legally qualified staff in the ABS will have a statutory duty not to cause or contribute to a breach of legal professional duties. Further, where any non-legally qualified person owns in excess of 10% of an ABS he/she will be subject to a fitness-to-own test. ABS regulators may attach conditions to investors, and may even divest them of their shares if they fail to meet prescribed standards. Hence, improper influence by the non-legally qualified members of the ABS is to be minimized and avoided.

The Law Society considered that the benefits of ABS would be outside investment and ownership of law firms. This would have perceived advantages of:

- economies of scale and increased efficiency;
- a single point of convenient, and complementary services (banks, large retailers etc);

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<sup>6</sup> This may include persons in occupations such as accountants, estate agents and so on.

<sup>7</sup> Other types of lawyers were subject to similar restrictions.

→ further, it would likely operate to reward non-legal staff with partnership / share ownership opportunities in the same way as used to operate for the legally qualified staff. This may encourage hard work, good practice and low turnover of staff.

## C.8 PART 6: Office of Legal Complaints

The Office of Legal Complaints was established with a Chief Ombudsman being appointed to oversee consumer complaints against lawyers. The actual disciplinary activities applicable to the service provider remains the responsibility of the specific approved regulator. Note however that the Office is responsible for complaints, not allegations of misconduct.

The LSA 2007 allows for compensation to be awarded following a successful complaint of up to £30,000, however the Office of Legal Complaints will not be able to penalize a respondent who has not been at fault.

Further, insofar as the complaint has been dealt with properly in-house, the Office of Legal Complaints may not require the respondent to pay charges in the event of the complaint having not been upheld.

### Conclusion

The LSA 2007 is changing the provision of legal services and the advent of what has been widely termed 'Tesco Law' will probably not cause the problems and panic some commentators have suggested. Indeed, whilst high street retailers (for example) may wish to enter the market to provide some legal services, in the same way they entered the financial services market, because of their access to these customers, they may have problems in convincing consumers to go there for legal advice.

People may be resistant to receiving legal advice from bodies other than traditional legal practices when they are paying for the service. It appears from recent research that consumers' experience of a positive experience from solicitors' practices has improved – up from 65% to 83%.<sup>8</sup> Therefore, whilst competition is to be welcomed, consumers may not immediately be willing to pay for their legal advice whilst shopping for their weekly groceries. Only time will tell the size of the impact this Act will have on the provision of legal services.

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<sup>8</sup> <http://www.sra.org.uk/sra/how-we-work/consumer-research/consumer-research.page>.