

TescoLaw, AsdaAudit?

Government proposals for the reform of legal services could change the professional landscape from the High Street to the City, claims Stephen Copp



The white paper's generally flexible and risk-based approach to the regulation of ABSs indicates how some deregulation might be achieved in the legal profession

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The opening up of legal services markets – widely and emotively dubbed TescoLaw – has come one step closer to reality with the publication of the Department of Constitutional Affairs (DCA) white paper on *The Future of Legal Services: Putting Consumers First* (www.dca.gov.uk/legalsys/lreform.htm). The proposals promise to have a major impact not only on the legal profession (as the title might imply) but also upon the accountancy profession and business generally. The white paper for the most part concentrates on the consumer aspects of legal services. Specifically, it proposes sweeping away the existing regulatory maze, by proposing the establishment of a new overarching regulator, the Legal Services Board (LSB) and the – independent – Office for Legal Complaints. However, more likely to attract attention are the proposals for Alternative Business Structures (ABSs), through which different types of lawyers and non-lawyers may be able to work together to provide one-stop shopping for a potentially diverse range of associated services.

Regulatory questions?

The key proposals for ABSs are that front line regulators authorised by the LSB (broadly existing law bodies, such as the Law Society or Bar Council) would license ABSs, examining, for example, ownership and management structures, proposed services (to include at least one reserved legal service) and, according to one part of the white paper, their business plan. External investment will only be permitted based on a fitness to own test, covering, for example, honesty, competence and financial

soundness. Lawyers would not necessarily have to have majority control of an ABS, but an ABS would need a HOLP (head of legal practice) and a HOFA (head of finance and administration – not necessarily a lawyer). While it might be thought that an ABS could entail a new type of business structure, most forms of existing legal entity may be used, strikingly including the plc. With Clifford Chance (*The Lawyer*, October 2005) leading the global 100 law firms by turnover – some £914m – the prospect of a law firm one day taking its place in the FTSE 100 cannot be dismissed. The white paper is, however, regrettably weak in addressing the many regulatory and practical questions which arise, even acknowledging the risks of regulatory confusion within firms and among regulators. These are, of course, the very questions that other interested professionals, such as chartered accountants, will expect answers to.

A case for restructuring?

The justifications for the white paper's proposals on ABSs are essentially that they would increase competition, encourage innovation, reduce costs, be more consumer-friendly and, through attracting new capital, bring in a radical restructuring of the industry. But for a City firm taking part in a beauty parade or a small firm giving a conveyancing quote, things probably look quite competitive already. So, is there a problem? Nick Stace of *Which?* is quoted prominently, on the case against self-regulation, as saying how people complain time and again about the second-rate service they receive from solicitors, often during stressful times.



Worryingly, among the copious economic evidence amassed by the DCA, is an estimate in a paper by Professor Grout of Bristol University that, per solicitor, a partner in a small law firm (ie, two to four partners) was almost 60 times more likely to engage in dishonest practices than a partner in a large firm (ie, 21 or more partners). It is certainly possible that the adoption of ABSs, by facilitating firm growth, could contribute to reducing such problems, aside from the other positive benefits they would bring.

ASDAudit?

The white paper's generally flexible and risk-based approach to the regulation of ABSs indicates how some deregulation might be achieved in the legal profession, hopefully without compromising core values, such as the importance of justice. It is interesting to speculate on whether there is also a need for deregulation of the accounting profession – perhaps dubbed AsdaAudit? – and, if so, what form it might take. Regrettably, such questions appear to be off the agenda in the post-Enron environment.