

Alternative business structures



Opportunity knocks

Nicola Laver talks to Christine Kings, commercial director of Outer Temple Chambers, Stuart Borrie of K&L Gates and Jeremy Hopkins, practice manager at 3 Verulam Buildings, about whether alternative business structures have anything to offer the Bar

The Bar has been slow to grasp the opportunities that alternative business structures (ABSs) have to offer in a new legal landscape. To date, just eight barristers have declared to the Bar Standards Board (as required under its code of conduct) an ownership interest in a legal disciplinary practice (LDP) in which they are not employed; and 23 have declared an interest in the LDPs in which they are employed.

Such hesitancy is not without good reason. Christine Kings, commercial director of Outer Temple Chambers, says the Bar has good grounds to be cautious about ABSs. She explains: “The benefits are not obvious at this stage. The only reason for being involved in an ABS would be if it delivered more specialist and more profitable work to chambers. Potential conflict issues through an ABS could reduce or limit that work.”

In August, the Legal Services Board approved the BSB’s application for changes to the Bar’s code of conduct to allow barristers to be managers or employees of alternative business structures. However, the BSB is not currently in a position to regulate ABSs. The Solicitors Regulation Authority (SRA), the other option, has no experience of regulating chambers. Kings says: “Given that most barristers have no business or entrepreneurial experience, it’s not difficult to see why the Bar is waiting to see what will happen.”

Yet chambers are going to have to re-examine the traditional model of supplying their services. No-one knows what the new legal market will look like once ABSs have been established but it will be risky for chambers to sit on their laurels and simply wait.

Kings warns: “There is a widespread expectation that some chambers are not going to survive in the new market. The Legal Services Act 2007 (LSA 2007) is not solely responsible for this –

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the recession, legal aid cuts, new technology and too many trainees coming into the legal profession are all contributory factors.”

New opportunities

So what new opportunities now exist for barristers? Stuart Borrie of K&L Gates is advising a number of chambers on multidisciplinary practices (MDPs) and ABSs.

He says: “ABSs allow barristers to challenge solicitors having the primary relationship with the ultimate clients. Barristers may find that their costs are lower, and they can provide a high-quality offering. The ABS opens up the possibility of external investment in legal operations; of tied interests. It is also interesting as a way of having a structure which encourages barristers to build relationships and to think proactively about how to win work for the team.”

However, not all chambers need change. Borrie explains: “A few chambers (the equivalent of the magic circle) are doing extremely well and they will not change – the LSA 2007 does not really affect them. But there are many others, with established practices and well-known names, who win work in a competitive environment: the regulatory objective of ‘promoting competition’ in legal services underlines that commercial challenge.”

The regulatory changes also amount to an opportunity because barristers can now set up ABSs and MDPs – barrister firms, he says. “We are finding that they can incentivise barristers to work as a team to gain appointments, perhaps across several legal areas, from in-house legal departments. The take up of new structures by parts of the Bar will certainly increase over the next few years.”

Jeremy Hopkins, practice manager at 3 Verulam Buildings and author of the Clerkingwell blog, says the Bar’s strength “derives from its independence and ability to provide specialist advocacy and expertise at competitive cost. ABSs may open up possibilities to compete on cost (through scale, for example), although this will not be easy. And it will be hard to retain the independence that allows conflicts to be avoided and drives individuals to the Bar in the first place”.

While he believes there will be good opportunities for barristers in ABSs, he warns: “They would need to be prepared to compromise independence and to adapt to working on others’ terms rather than their own; for instance, having a boss. For barristers practising in publicly funded areas, ABSs may provide a lifeline for financial security.”

Potential risks

What are the potential risks of investment from, for example, private equity firms? Hopkins says that external investment could provide capital for growth, marketing and management expertise, but this would also compromise independence and it is doubtful whether the benefits would justify the investment. “It is hard to see how a decent return could be generated. It would either have to come from reducing the cost base, which is already very low, or from barristers drawing out less – which they are obviously unlikely to be keen on.”

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Christine Kings

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Hopkins says the Bar’s response to ABSs is essentially a question of “safeguarding existing businesses in the new environment”. He adds: “The supply chain is changing so it’s key to remain in very close contact with referrers and understand and adapt to their changing requirements. Chambers should ensure they have strongly aligned values and strategies among members to maintain the commercial agility and cohesion needed to avoid members being tempted by other options.”

An anonymous barrister who is “excited” at the prospect of the opportunities ABSs offer bemoans the “years of frustration of being straitjacketed into a profession that has not changed dramatically in over 100 years or so”. And freedom is a key attraction.

The BSB says: “We believe that the new regime will give barristers more freedom to react to changes in the legal market and permit them to devise new ways of working in order to remain competitive and better serve the public. In addition to forming BSB regulated entities in due course, they will be able to act as owners or managers of ABSs regulated by other approved authorities.”

The future of the Bar as a whole looks strong. Hopkins says: “In my view, the Bar’s future is very bright, provided it keeps pace in terms of management and client service with the ‘new’ legal marketplace.”

As Kings says: “There will continue to be a demand for independent high quality advice and advocacy and ABSs will not present a threat to the barristers and chambers that can deliver it. While many barristers feel that it is the independent self-employed nature of the Bar that characterises the profession, it is more the specialist advocate role that characterises the profession and that is something the Bar will continue to provide whatever structures barristers operate in from now on.”

Nicola Laver is a freelance journalist

