

Alternative Business Structures: An Unfulfilled Fear?

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One of the three objectives of the Legal Services Act 2007 was to facilitate the creation of new structures of legal practice, which would include allowing non-lawyers to own and manage legal service providers. This was achieved through the introduction of alternative business structures (ABS). At the heart of the reforms are three themes: independence, increased competitiveness and increased choice for consumers. These reforms have generated concern within the legal profession. Lawyers feared that allowing non-lawyers to provide legal services would result in a loss of professional control which would damage the industry.

The Legal Services Act removed certain restrictions on the practice of law and sources of funding. Under alternative business structures, non-lawyers are able to own and manage bodies providing legal services, and carry out legal activities within a licensed body, which have traditionally been reserved for lawyers. ABS are able to raise capital by listing on the stock exchange, to float their shares, and be publically traded. This is unlike a limited liability partnership (LLP) – the conventional structure of a legal practice – where capital is raised as equity from the partners or as loans from the bank. An ABS allows for the creation of multidisciplinary practices, or ‘one-stop shops’, for prospective consumers of legal services.

The reaction to ABS amongst leading law firms headquartered in the United Kingdom has been negative. Hogan Lovells and ‘magic circle’ firms, Linklaters and Slaughter and May, have flatly rejected the reforms. However, the threat that ABS pose to professional control does not stop here. The Legal Services Act has allowed well-established consumer brands i.e. supermarkets to enter the legal services market. The Co-operative Group, a British retailer, became the first to adopt ABS in 2012. The Co-operative set up Co-operative Legal Services and divided it into six practice areas: probate, wills, family law, personal injury, employment and conveyancing. For Co-operative Legal Services, this equates to low-cost, high-volume work. Their diversification into legal services has been a success and they are now a market leader in probate and estate administration.

Eddie Stobart, a transport and distribution company, launched Stobart Barristers in 2012. The ABS’s unique selling proposition was to cut out solicitors, enabling clients to go straight to barristers with their legal problems. However, the Stobarts reached the end of the road in 2014, when they had to stop their venture into legal services. The Co-operative Group’s innovation has caught on. Canadian law firm, Axxcess Law, have been operating out of Walmart, an American multinational retailing corporation, since early 2015. Like Co-operative Legal Services, Axxcess Law aims to offer accessible legal advice and support at consumer convenience.

The opening up of the legal services market to non-lawyers has been met with concerns from the legal profession who feared that a loss of professional control would damage the industry. As Lord Neuberger, the President of the Supreme Court said in a speech to the Bar Conference : “You cannot treat the supply of legal services like the supply of baked beans by a food retailer.”

Resultantly, safeguards were introduced to protect against such a loss. If a non-lawyer owns more than 10% of a firm, they have to meet a ‘fitness to own’ test. External investors are also subject to this test, which covers honesty, integrity, reputation, competence, capability and financial soundness. At least one manager must be a solicitor with a current practising certificate.

The emergence of alternative business structures follows the general trend towards the commoditisation of basic legal services. Commoditised work is work that can be routinised and replicated to meet the relatively simple legal needs of the consumer. For example, an employment contract is required by law to contain certain terms, and as a result the majority of employment contracts look more or less the same. Commoditising these means their drafting no longer requires as much time, cost, or an expert lawyer. The new entrants serve a different function. Unlike in large City firms, Co-operative Legal Services only supply legal services to consumers. They do not, and could not, supply legal services to multinational corporations.

The Legal Services Act enabled consumer brands to diversify and innovate their services by breaking into legal services. As the industry continues to move towards commoditisation and explore the commercial benefits of innovation, the opportunity for businesses to acquire ABS status remains an attractive one.