

# Stop the ABS

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By [Kerry Underwood](#)

Legal advice should be provided by lawyers, not ABSs, says Kerry Underwood, so we must stop the Legal Services Bill

Back to the subject of the Legal Services Bill (supermarket law to you and me) this month, but there is some light on the horizon.

Although, bizarrely, the Law Society and the Bar Council still officially welcome the government's proposals to all but abolish the legal profession, just about everybody else is waking up to the dangers and attacking the Bill with varying degrees of virulence.

First up were the judges. Giving evidence to the Joint Parliamentary Committee examining the Bill, the Lord Chief Justice, Lord Phillips, said that the proposed alternative business structure (ABS) "is going beyond Sir David Clementi's recommendations in a dramatic way. People think it means they will be able to get legal advice from a kiosk in Tesco for £5". He went on to point out that claims management companies would want to take advantage of the new regime and provide legal advice directly, echoing my own remarks in 'Supermarket sweep' (2005) SJ 1294, 04.11.05 that "claims management companies will simply take over the personal injury firms that they control anyway".

The Master of the Rolls, Sir Anthony Clarke, said: "Anyone who is going to invest money is going to expect a return. It is far from clear to me how this will improve access to justice."

Clarke also said: "There are going to be a whole series of ABS regulators and, like a ship choosing which flag to fly, there will be competition and it's rather a worry."

Next up were various governments of the European Union. Germany's legal regulator said that firms with non-lawyer shareholders would be "inconsistent with the requirements of German law" and would face a major problem if they wanted to operate in Germany. Germany is one of the few countries that has long allowed multi-disciplinary partnerships (MDPs) and was considered the country with the nearest equivalent to ABSs. It is thought that virtually all EU countries will prevent or restrict ABSs from operating in their countries. It is a foregone conclusion that the US, which would not even consider MDPs, will ban ABSs from operating. Commonwealth countries are thought likely to follow suit.

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Lord Phillips

Thus, from being the envy of the world, the legal system and profession of England and Wales is one Legal Services Bill away from being international pariahs. Quite a feat after 731 years at the top, starting with the Statute of Westminster in 1275.

True, it is not compulsory to become an ABS, but virtually all law firms will. It would make no economic sense to let claims management companies, supermarkets and insurance companies compete while having to maintain, in law firms, 100 per cent lawyers as managers, no investment and Law Society regulation. I oppose ABSs in their entirety, but if it is to be the Wild West, then I will try and be even wilder. We will all be ABSs and for most of us not being able to operate in Europe and the US does not have a huge effect on our day-to-day practice. None actually.

The losers will be the big City firms – tarred with the ABS brush – even if they choose to stay good old-fashioned partnerships. Presumably they will float on the Stock Exchange and the equity partners will ride off into the sunset. Good luck to them. So if anyone thinks there will be any form of legal profession left if the Bill goes through – dream on.

In a very welcome development, the new president of the Law Society (revoltingly described in this publication last week as “the new chair”) Fiona Woolf, in these very pages (28 July 2006) said that the Bill “raises huge concerns about the independence of the profession. The Bill could create a heavy-handed, expensive regulatory regime that would be confusing and costly. The government also seems to have lost the plot on what alternative business structures are all about and how to regulate them”.

Last, and best, the Joint Parliamentary Committee has savaged the Bill; at 177 pages long, published on 25 July 2006, it is essential reading for all lawyers. It points out that the public interest and consumer interest are not the same and that public interest should be included in the regulatory objectives. The Consumers’ Association and Office of Fair Trading, please note.

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As to ABSs, how about this:

“The approach to liberalising business structures in the draft Bill is the one area where the government seeks to go well beyond the recommendations of Sir

David Clementi and where we find the reforms most troubling. We have been told about the potential for conflicts of interest in ABS firms, both between lawyers and shareholders and between lawyers and non-lawyers. We are worried both about the speed of approach and the level of uncertainty about the impact of the reforms particularly on access to justice in rural areas and legal aid provision. Our overriding concern is that nothing in the reforms should have a detrimental impact on the quality of legal services provided by a legal professional to a client.”

Encouragingly, the committee also proposes regulating will-writers (currently unregulated).

There is a long way to go yet, but this Bill will not get through the House of Lords and may struggle to get through the House of Commons. It is the most significant constitutional legislation at least since the Parliament Act 1911. The new Supreme Court may feel that an Act abolishing the legal profession and forced through under the Parliament Act deserves careful judicial scrutiny.

As I said last November, getting this legislation thrown out by any lawful means should be our only concern. It is not about protectionism. After all if you are in an aeroplane, you want a pilot, not an ABS; at an operation, a surgeon, not an ABS. Clients need and deserve lawyers, not ABSs.

Baked beans, Ms Prentice?

Postscript:

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