



Qualitative Research into Alternative Business Structures (ABSs)

Solicitors Regulation Authority

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Contents

1	Introduction	1
1.1	The purpose of the qualitative study	1
1.2	The case studies	1
1.2.1	Case study selection and approach	1
1.2.2	Case study topics and analytical considerations	1
1.3	This report	2
2	The drivers and rationale for becoming an ABS	3
2.1	Firm context prior to application	3
2.2	The key factors driving engagement with the ABS process	3
2.3	The strategic importance of becoming an ABS	4
2.4	Upfront planning before entering the ABS licensing process	4
3	Experiences of the ABS licensing process.....	6
3.1	The timescale for ABS licensing	6
3.2	Overview of what worked well and less well with the licensing process	7
3.3	Proportionality of the licensing process and resources required	9
3.4	Resource impact of undertaking the ABS licensing process	11
3.5	Information and support for navigating the process	11
4	The impact of becoming an ABS	12
4.1	The transition to becoming an ABS	12
4.2	On-going engagement with the SRA	12
4.3	Early impacts of becoming an ABS.....	13
4.4	Reflections on the added value of being an ABS	13
4.5	Next steps for firms that withdrew from the process	14
Annex 1	Case study topic guide.....	15
A.	Introduction and background	15
B.	Rationale and drivers for becoming an ABS	15
C.	Experience of the ABS licensing process	15
D1.	Impact of becoming an ABS (<i>for case study firms successfully completing the process</i>)	17
D2.	Next steps for firms that withdrew from the process (<i>for case study firms that withdrew</i>)	18

1 Introduction

1.1 The purpose of the qualitative study

This report sets out the main findings from the qualitative study undertaken by ICF GHK for the Solicitors Regulation Authority (SRA) on Alternative Business Structures (ABSs). The research was based around eight case studies on licensed and prospective ABSs undertaken in December 2013 and January 2014.

The SRA is committed to reporting to the Legal Services Board on progress with the ABS licensing process. To those ends, in late 2013, the SRA undertook an online survey of ABS firms followed by a subsequent survey of firms that withdrew from the licensing process.

While the online survey was a good tool for measuring ABS views on the licensing process and characteristic information about the emerging ABS market, its scope was inevitably more limited in terms of being able to contextualise ABS responses and test the views provided by ABSs.

The SRA therefore commissioned this qualitative study to provide an additional layer of intelligence to inform the SRA's understanding of the ABS licensing process, as well as an independent view of firms' responses.

1.2 The case studies

1.2.1 Case study selection and approach

The eight case study firms were selected to ensure a mix of ABS contexts were covered:

- It was decided that the sample should include six firms that had obtained an ABS license and two firms that withdrew from the process.
- Out of the six successful applicants, it was agreed to include one Legal Disciplinary Practice (LDP) to reflect experience of the more streamlined process available to these firms.
- The remainder of firms were selected to include a cross-section by firm size, as well as including examples of relatively straightforward and more complex applications (in relation to ownership structures).

The sample was drawn initially from respondents to the SRA online survey that had consented to follow-up interviews. It was augmented by firm contacts from the SRA licensing team. The sample was therefore not random and was to some extent purposefully selected to ensure a mix of perspectives. Care should be taken in generalising from the experiences of eight firms to the several hundred-plus licensed and prospective ABS's. However, the case studies do highlight common themes and messages about the process.

The case studies were based on a mix of face-to-face and telephone interviews with the key staff within each firm involved in the ABS licensing process – typically the Compliance Officers for Legal Practice (COLPs) and for Finance and Administration (COFAs). One of the messages emerging from the research is that **ABS licensing tends to be the responsibility of a small core team within legal firms**. In some cases, in effect, one person manages all elements of the process.

1.2.2 Case study topics and analytical considerations

The case studies covered three main topics:

- The rationale and drivers for becoming an ABS.
- Experiences of the licensing process.
- Early impact of becoming an ABS (and next steps for firms that withdrew from the process).

One issue regarding the case studies was the importance of being able to interpret respondent views about the licensing process itself, given that the process has evolved since its introduction in January 2012. As we were, in the main, targeting firms that had completed the licensing process – and the licensing process takes time – most firms had experienced the initial licensing process and not the revised application process and forms rolled out in spring 2013.

1.3 This report

The remainder of this report is structured as follows:

- Chapter 2 focuses on the rationale and drivers for becoming an ABS, including the firm context prior to making the application, pre-planning in advance of starting the process and the level of strategic importance attached to ABS licensing.
- Chapter 3 looks at the firms' experiences of the licensing process itself, including how it impacted on their plans and reflections on the support for navigating the process. It also provides an overview of what worked well and what worked less well in relation to ABS licensing according to the case study firms.
- Chapter 4 looks at the post-licensing transition to operating as an ABS, including early impacts of being an ABS on the firms. It also discusses the next steps for those firms that withdrew from the licensing process.

The case study topic guide is included in Annex 1 to the report.

2 The drivers and rationale for becoming an ABS

This chapter covers the drivers and rationale for becoming an ABS across the case study sample, including discussion of planning in advance of entering the licensing process.

2.1 Firm context prior to application

While it is difficult to generalise from a sample of eight firms, the case studies highlight how **the ABS process has engaged a range of quite different types of organisation**, including:

- Well-established legal firms using the ABS process to re-position themselves for future growth or diversification (some with significant plans for change, others for which continuity is the short-term priority).
- Firms previously operating in a non-legal environment, but looking to expand into the provision of legal services (including firms that previously outsourced reserved legal activities, as well as firms providing other professional services for which there was an apparent synergy in moving into the legal market).
- Relatively new firms established within the last ten years and with clear eye from inception on evolving into an ABS-type model.

There is **no clear pattern regarding a firm's origin and how straight-forward the ABS process was in each case**. This is unsurprising given the relatively small number of case studies. However, it also reflects that the firms previously outside of the legal space all had in-house legal expertise and/or strengthened their capacity in this area before starting the ABS process. Box 1 below provides more detail on the specific firm context in each case.

Arguably, **the 'newer' firms had more ambitious (or clearer) ABS plans at the outset**. These firms, by their very nature, had typically spent longest planning for the ABS process. They were structured around an explicit ABS strategy, which had been in place, in some cases, for a number of years.

Even among more established firms, there were examples of changing firm structures in the years preceding the ABS licensing process. This included firms converting from limited company status to being partnerships (and vice versa), a firm that evolved from an LLP to an LDP, and a firm that evolved as a management buy-out of a limited company. In most cases, **the changing firm structures that preceded the ABS process were partly a response to the changing market for the provision of legal services**. The ABS model therefore clearly built on an existing demand among firms for flexibility in the provision of legal services.

2.2 The key factors driving engagement with the ABS process

Most firms had a clear sense of the benefits they expected from becoming an ABS. These were generally high-level in nature and have not altered through experience of the licensing process or early operations as an ABS (unsurprisingly, given the short timeframe between licensing and the case study interviews).

In one case, the rationale for becoming an ABS was linked to tax efficiency. More usually, **the primary driver for engaging with the process related to the ability to provide legal services alongside other, related services**. In some cases, as noted above, there were perceived efficiencies in being able to bring legal services in-house. In other cases, the scope for partnering was related either to:

- bringing in external expertise under the existing company banner to support entry into new markets, or
- 'piggy-backing' on existing brands to grow the customer base.

Irrespective of the approach taken, the **underlying rationale for applying to become an ABS related to clear perceived benefits in being able to offer customers multiple services from within the same company**. Even from the relatively small sample of firms

interviewed for this study, there were examples of plans to link the provision of legal services with a wide range of related services (accountancy; financial advice; estate agency; debt collection services; insurance; consultancy; payroll etc).

There were other residual benefits foreseen by the firms that encouraged consideration of the ABS model. Some of the smaller firms, in particular, saw security for the business in joining with external investors. Others noted that becoming an ABS created the potential to have a business that could, in future, be sold.

Upfront uncertainties among the firms mainly related to the licensing process itself (what applicant firms would have to do; dealing with the detailed requirements of the application form; perceived ambiguities etc). In many cases, this stemmed from ABS planning taking place before the ABS process was even launched, when there was inevitably a lack of detailed information about the process. Furthermore, in the immediate period after launch, the firms that engaged early could not, by definition, learn from or reflect on any experience from other firms having completed the process.

2.3 The strategic importance of becoming an ABS

There was some variation in the perceived strategic importance of ABS status to the firms:

- **In the long-term, the consensus among six out of the eight firms we interviewed was that being an ABS was critical to competing in their markets.** It was described on more than one occasion in the interviews as being something of a '*no brainer*', to the extent that the benefits from being an ABS were so obvious to the firms and potentially significant to their future growth that applying for a license took on a clear strategic importance. The other firms were either relatively specialised or had small-scale current provision of legal services.
- In the shorter-term, in most cases, the importance of being an ABS was more conceptual than practical. The exception was those firms with immediate prospects for outside investment (*money on the table*). It was primarily important for positioning in order to support long-term evolution in the provision of legal services, rather than something expected to transform the business in the next couple of years.

2.4 Upfront planning before entering the ABS licensing process

It was **not unusual for the firms to spend a year to 18 months planning for the ABS licensing process**. At this point, information about the process was at a premium, so, much of the focus was on high-level strategy:

- The capacity and skills that needed to be in place to develop an ABS.
- Internal discussions on investment opportunities (and, in some cases, discussions with investors).
- Consideration of new potential markets.

We spoke to firms that pro-actively engaged the SRA and others in order to gain an insight into the forthcoming launch of the ABS process, although this appears to be rather exceptional. For the most part, as discussed below, firms did not engage the SRA directly until after submitting the first stage of the application. It should be noted that the **two firms that reported having upfront discussions with the SRA or discussions while preparing the application found this to be invaluable**.

In most cases, therefore, there was some kind of plan in place before the ABS process started. It is probable that the 'newer' firms had more concrete plans for their proposed ABS businesses because the ABS model was hard-wired into the development of the organisations themselves. In other cases, plans to develop new markets for the provision of legal services were much more amorphous: a strategic direction had been set, but there was not necessarily a detailed business plan.

Box 1. Firm context and drivers for engaging with the ABS process

- 1) This firm traditionally employed external solicitors to manage legal aspects of its work. It had considerable expertise (legal and otherwise) already within the business. The firm specifically hired a legal manager (and prospective COLP) to manage the ABS application process. ABS was seen as a growth opportunity. The opportunity to keep legal work in-house was seen as a new income stream and a route to increased profitability. The firm also saw benefits from being regulated by a recognised body for reputational reasons – to improve professionalism and image in an un-regulated market. Shifting the firm's 'brand' to be seen as a legal firm rather than providing other services was felt to be a good business move. The main risks and uncertainties were perceived to be the increasing audit requirements on the firm.
- 2) This firm was originally set-up with a view to future reform of the legal services market. It therefore always had the intention of seeking outside investment in the context of a future ABS model. This meant there was extensive planning and preparation over the course of a number of years before the launch of the ABS process in 2012. There was extensive engagement with the SRA in advance of the application. The push for becoming an ABS was the opportunity to secure outside investment and develop new business models that would ultimately lead to the potential for cross-selling via established brands in related markets.
- 3) An established small legal practice, the firm was looking to expand its work to provide non-legal services within its existing market. The ABS model was viewed as means for achieving this by enabling the firm to bring in additional funding and business acumen. The latter was the key driver for engaging with the ABS licensing process. A further anticipated benefit was the prospect that the firm could be sold in future if it was an ABS. At the planning stage, there was an over-arching strategy for future growth, but no detailed operational plans in terms of new investors or recruits. Initial planning before submitting an ABS application took around a year. The main focus during this period was identifying and understanding the systems that would need to be in place. External support was brought to help the firm develop systems for the ABS application (for example, documenting policies on data management / security and terms of reference).
- 4) This firm offers a range of professional services to corporate clients. The provision of legal services was seen as a logical additional 'offer' by the firm. It anticipated long-benefits in becoming an ABS in terms of credibility, as a positive recruitment tool for attracting staff and in providing a better platform for expansion (from the brand of being a regulated firm). The firm is regulated in other professional contexts, so it also fitted its wider strategy to gain legal recognition.
- 5) This firm is part of a national network of legal providers. It converted from a Legal Disciplinary Practice (LDP) to an ABS. The firm spent around 18 months prior to starting the licensing process planning its future ABS 'offer'. The main drivers for becoming an ABS were obtaining external investment to grow the firm and to enable non-lawyers to be brought in with new skills to manage the firm and/or join the Board.
- 6) This firm was a partnership which became a limited company in recent years. The rationale for becoming an ABS was tax efficiency. The firm did not intend to change its service offer and operating approach as consequence of having an ABS licence.
- 7) This firm was a regulated legal practice with an affiliated group that wanted to become majority shareholder – becoming an ABS was the route to enable this to happen. The idea was first considered around 12 months before the application process was started in mid-2012. The anticipated benefits of becoming an ABS were the stability and security provided by having a major investor that is established in the field. There was also strong synergy in joining-up with an investor that was an existing partner/client of the law firm. It was anticipated that the ABS model would make the firm more competitive, providing consumers with access to a wider range of services.
- 8) This firm provides a range of legal, medical and finance services. A holdings board consisting principally of two investors owns the business. The ABS application was handled by two managers: a finance director brought in to manage the ABS and a senior director looking after elements of the application, such as gathering senior management buy-in to collect all of the supporting information required. The firm has grown in recent years and ABS status was seen a necessity in order to continue that process, especially as it would enable the company to draw-down funding more easily (in comparison with commercial loans). In the long-term, it was also felt that ABS status would enable both outside investment and the possibility of acquisition to support continued growth.

3 Experiences of the ABS licensing process

This chapter looks at the firms' experiences of the licensing process itself, including how it impacted on their plans and reflections on the support available for navigating the process.

3.1 The timescale for ABS licensing

It is important to note that experiences of the licensing process related to the timing of initial engagement. Most of the firms interviewed for this study used the initial guidance and application process launched by the SRA in January, 2012. This process has already been substantially refined based on early feedback.

One of the most common bits of feedback about the process related to the length of time taken from initial application to receiving the ABS license. **All firms reported that it took longer than expected to gain the license.** Many argued that it took much longer than was necessary given the relatively simple firm structures often being proposed (according to the firms themselves).

This feedback is unlikely to surprise the SRA given that the subsequent evolution of the licensing process was in part a response to an identified need to streamline the process. It should also be noted that **a number of firms acknowledged that introducing ABS licensing was an extremely complex undertaking and that it would be expected that it would take time to bed-down.** A couple of firms reflected that, if they had their time again, they may have delayed starting the process until it had become more established.

Out of the six case study firms that successfully completed the process, the reported timescales from application to approval are shown in Table 3.1 below. While it is not a representative sample, it does indicate that **the duration of the ABS licensing process may be getting shorter over time.** The most recent (and the quickest) application process was also arguably one of the most complex from a firm structure perspective.

Table 3.1 Reported timescales for successful firms

Application submitted	Approval received	Duration (Approx.)
Late January, 2012	Mid-December, 2012	10.5 months
Late September, 2012	July, 2013	10 months
November, 2012 (note, originally applied in January, 2012)	August, 2013	10 months
December, 2012	July, 2013	8 months
March, 2013	Mid-November, 2013	8 months
Mid-May, 2013	Mid-November, 2013	6 months

Note: These reported timescales are based on firms' own perceptions of when the process started

3.2 Overview of what worked well and less well with the licensing process

Below we set out the aspects of the licensing process that worked well and worked less well according to the case study firms. There are some common messages here; but **it is also clear that firms did not have a uniform experience of the process**. To some extent, this reflects the varying levels of complexity of different applications. However, this does not fully explain the differences in experience.

We would suggest that differences in response between firms were also dependent on:

- **The differing expectations of firms about the process** and how this shaped their experience. Some firms expected the process to be complex because the ABS model was new, and were therefore not overly-concerned about duration – although noting it as an issue. Other firms became anxious as result of lack of communication and, because they expected ABS licensing to be straightforward in their case, were frustrated by the time it took.
- **Whether firms were able to make effective contact with the SRA** (e.g. to meet the SRA; get in touch with a named contact) and how long it took to make this contact. The human interaction was important in providing reassurance and for navigating potential bumps in the road.
- **The level of external pressure** faced by applicant firms, especially in the context of relationships with external investors. One firm that was relatively sanguine about the time taken for the process had converted from a partnership to a limited company shortly before entering the ABS process. As such, while bringing in external investment (and expertise) was central to the rationale for becoming an ABS, tactically the firm was establishing its new structure during 2013 while the ABS application was on-going. It always envisaged that taking advantage of the opportunities afforded by being an ABS was a medium-term goal; and so there was no particular time pressure over when the ABS license was received. In other cases, the anticipated date of completion was much more important for progressing investment plans.

According the interviewees, the following aspects of the licensing process worked well:

- The fact that **the process ‘tested’ firms and ensured that internal procedures were robust**. This was a particularly useful aspect of the process for some firms that completed the process in-house. One firm explicitly felt that the ABS process was an effective test-case for it in terms of the reality of outcomes-focused regulation. These views illustrate the main lever by which the ABS licensing process itself influenced firms' plans. While the impact on business plans was quite superficial, those firms that were breaking into new markets found it to be quite important to ensure that they had rigorous compliance procedures in place. The ABS licensing process provided external validation of these procedures. This was an additional benefit of the process for those firms (especially larger firms) for which risk and compliance were already viewed as a high priority. The process did not necessarily change the views of firms that may not have made these areas such a high priority.
- **Its thorough nature and the absence of surprises** – nothing was requested that was unanticipated. Not all firms would subscribe to this view. This view came from a firm that spent consider time mapping out anticipated requirements at the start of the process.
- The **responsiveness of the SRA in confirming applicant firms' understanding of requirements**, where necessary. Note that this is a positive perspective on an element of the process that some firms found to be challenging; namely, a lack of clarity about what was expected. Similarly, some firms commented positively on the SRA's openness to upfront engagement (e.g. holding initial meetings) and the effort made by the SRA to build up an understanding of applicant firms. The flexibility of the process in terms of **being able to negotiate extensions** was also reported as a positive aspect.
- The **account management model** was widely reported as a significant improvement for firms that either went through the process multiple times or had a ‘stop-start’ engagement with ABS licensing. Again, the notion of having a central point of contact

was extremely valuable to firms, given that, at certain points in the process, there was often a need for quite frequent contact (e.g. to clarify responses to queries and gaps identified by the SRA).

- The **support provided by individual members of the SRA team** 'at the end of the phone' was widely felt to be '*professional*' and '*very helpful*'. One firm contrasted the tenor of engagement with the SRA team in this context with previous experiences in an enforcement context. Another firm reported that the SRA was easy to contact and provided good feedback during the licensing process.
- The **webcasts** were not widely used by the applicant firms (most reported lack of awareness), but were reported to be helpful where firms did use them.

The aspects of the licensing process that worked less-well according to the case study firms were:

- As noted above, the **length of the process** was generally felt to be a weakness. This led to specific frustrations relating to:
 - *Lack of communication compounding the lengthy process*: One firm made what it felt to be straightforward changes to its application (additional shareholders), but said that this went into an '*information vacuum*', to the extent that the firm wondered if the application had been lost. After four months without communication, the firm received a few additional clarifications on risk and outsourcing. It then reportedly heard nothing for a further three months before being emailed to say that the application was successful. Lack of communication led to uncertainty in this case and others, even where there were no substantive problems with the application.
 - *Perceived imbalances in required responsiveness*: There was a related perception that applicant firms were required to 'drop everything' to meet/respond to SRA queries, but this was coupled with a lack of clarity about when firms would hear whether they had satisfactorily addressed the issue.
 - *Time lag between application and the receipt of any substantive response*: One firm reported that it took over six months from the application to receiving any queries. This gave an impression of disorganisation. This specific point was qualified by the applicant's view that he/she understood that ABS licensing was inevitably something of a learning process for the SRA at the time.
 - *Uncertainty caused by having a 'pre-application' phase*: A couple of firms reported unprompted that having clear parameters around the expected timescale for the licensing process was important for internal planning and informing investors. One firm reported that it had around four months of correspondence with the SRA before the application was deemed to be successfully made, which was the point at which '*the clock started ticking*'. Rather than providing certainty about the process, this meant that there was an amorphous initial phase with no sense of control for applicants about when it would end. The effect on the firm was that could not indicate to corporate partners/investors with any confidence how long the ABS process would take.
- The initial **guidance** provided to support ABS applications was widely reported to be ambiguous, although it was difficult for firms to recall specific questions that were problematic. The general sense was that it was not always clear what was required in response to questions on the application form. Even some of the firms that found the forms to be navigable overall for an experienced legal professional reported that it took some effort to complete the forms. The original user interface for completing forms online (with no apparent save or print function) was a severe headache for a couple of the firms. There was a sense of a '*one size fits all*' approach, which made some firms feel that not all questions were applicable to them. This was a significant cause of ambiguity, even though it makes sense from a regulatory perspective. When prompted, there was an acknowledgement from a number of interviewees that introducing multiple processes for different firms could make the process more complex and would be practically difficult to implement. There were, however, felt to be ambiguities in terms of which individuals

needed to be regulated. Interestingly, the introduction of the new structured application process and revised guidance in 2013 created new challenges for applicants resulting from a reported need even for experienced legal compliance professionals to refer back to the Legal Services Act.

- One firm reported that engagement with the SRA was primarily by email, with around half a dozen phone calls to deal with specific questions about whether an identified issue had been satisfactorily addressed or not. The firm's view was that while it was open to this engagement at the instigation of the applicant, **the SRA could have been more proactive** in engaging directly and this would have saved time for all concerned.
- A couple of firms reported the **lack of a joined-up approach within the SRA**, certainly when the ABS process was first launched. This was particularly apparent to firms that were already regulated by the SRA. One firm reported that information was not passed between SRA staff. Another firm reported that it had completed its Lexcel accreditation, had received a practitioner visit, but felt that, when first engaging with the authorisations team, '*they didn't know who we were*'. Another firm made a similar point on a perceived imbalance in what the ABS team knew about the firm and what the wider SRA knew about the firm.

It is notable that SRA support was reported as both the clearest positive aspect of the process (the helpfulness, professionalism and responsiveness of staff) and one of the main frustrations (lack of communication). It is difficult to unpick whether - and the extent to which - these different viewpoints relate to:

- how well-established the licensing process was when each firm tried to engage the SRA;
- the level of proactivity from each firm in trying to engage the SRA;
- the applicant's relationship with the members of the SRA team handling their applications.

Where firms had to withdraw from the process, this was for reasons that were not related to the process itself – although it was influenced by the requirements of the process. The main reasons for withdrawal related to gaining insurance in one case and investor reorganisation in another (compounded by the time taken to clarify and meet the Schedule 13 requirements).

3.3 Proportionality of the licensing process and resources required

A number of the firms thought **that the application was disproportionate in terms of the volume of information and detail required, but not in terms of the effort required by applicants**. One firm reported that '*it takes less time to set up a law firm*'.

Common responses in terms of disproportionate information requirements tended to relate to specific firms feeling that they were either known to the SRA or had a simple ABS model; and could therefore have benefited from an expedited process somehow.

It was mentioned by various firms that there seemed to be little acknowledgement of existing quality assurance standards (Lexcel) or the input of regulating bodies for other professions (as a potential short-cut to Schedule 13 in some cases, although it is not clear that this is practically viable).

One firm reflected that the pass-porting process for Legal Disciplinary Practices (LDPs) was '*unwieldy*', but this was largely because the new SRA handbook required firms to re-visit their procedures around the same time in any case. More recent experience from the same firm has been that it is a '*genuinely abridged process*' for LDPs.

The main area in which the proportionality of the process was questioned related to the Schedule 13 requirements¹. It was generally understood that the SRA has limited

¹ Schedule 13 of the Legal Services Act 2007 relates to ownership of licensed bodies. It states that a non-authorised person with a material interest in the body (e.g. through shareholding / ability to exercise significant

scope for flexibility regarding the application of Schedule 13 requirements – but it was a cause of significant challenges for some applicants (although not insurmountable challenges, it seems).

Concerns faced by firms included:

- The need for equivalent CRB checks for investors in other countries where the same systems may not be in place.
- Perceived difficulties in completing Schedule 13 requirements where investors were equity firms not individual investors, and where responsibility is delegated to fund managers so that individual investors may be not aware of the ABS applicant firm. Similar issues were faced where there were complex ownership structures including parent and holding companies – with information required from people with little interest in the ABS process (or firm). In practical terms, this tended to mean extra effort was required from senior firm staff to gather the required information, rather than the information being unobtainable.
- The range of information that individuals are required to report on caused embarrassment and sensitivity in at least one case (including the need for independent statements from referees).
- Lack of clarity about who is in scope of the Schedule 13 process. One firm reported originally being asked by the SRA for over 50 declarations² (negotiated down to 20). Another firm initially thought it was going to have to seek declarations from a large number of people, but it was negotiated down to seven Directors. This appears to indicate a degree of flexibility being applied, where possible, within the confines of the Schedule 13 requirements.
- Lack of clarity about how information on investors' history (especially relating to Directors involved insolvency processes) would be interpreted by the SRA, causing unnecessary anxiety and uncertainty.

It was mentioned by several firms that the Schedule 13 requirements were the main barrier to the ABS process operating as an effective means of opening up the legal services market. The requirements could put off investors, according to more than one firm. This would be a result of both:

- The required effort for certain types of institutional investor for whom the ABS firm would be a business of relatively small interest.
- The depth of (personally sensitive) information required from other investors.

One interviewee said that this was partly a question of experience. As someone who had worked extensively in the legal field, the requirements were not especially prohibitive (*'I'm used to the scrutiny'*), but there was something of a culture shock for outside investors. Arguably this is a signal that a robust process is in place that maintains the integrity of legal regulation; although this is not how all firms saw it.

More significantly, in terms of whether the requirements are a block to opening up legal services, Schedule 13 was discussed by the firms as a barrier in purely hypothetical terms. Even in cases where the applicant firms had to deal with substantial challenges in completing the necessary declarations, there were no examples of investors refusing to comply or withdrawing as result of the process. This might suggest that **while Schedule 13 creates challenges for applicant firms, it tends not to outweigh the clear potential benefits for investors.**

influence over the management of the body) must be approved (e.g. to ensure that the individual is a fit and proper person to hold that interest).

² Individuals with an interest in the firm required to undertake the SRA's suitability test and complete the form / declaration under Schedule 13 of the Legal Services Act

3.4 Resource impact of undertaking the ABS licensing process

In terms of resources required, the application process was typically managed by an experienced legal professional who came to the process with a good understanding of what kind input would be required. **The required inputs were not thought to be excessive when set against the anticipated long-term benefits. The same was true of the application and screening fees** (one firm explicitly stated that these were good value considering the level of support and advice it received from the SRA).

Some of the firms used external consultants to support the completion of the application, but the majority undertook the whole process in-house. One firm reported having a consultant '*on speed dial*' throughout the process. In another case, external advice was sought from an accountant (on the financial structure of the firm). One firm used contacts to borrow a template business plan.

A couple of firms explicitly stated that it was important to them to complete the application in-house in order to be sure that there was active consideration of all of the required elements of being an ABS. One interviewee reported considering using an external consultant as other applicants were, but thought that the costs would be prohibitive and that it was a matter of professional pride to be able to complete the application in-house. After completing the process, the interviewee said that it was more understandable why firms would want to outsource some of the difficult elements of the application. Another firm that completed the process entirely in-house felt that the prospect of ABS applicants using bought-in 'template' answers led to risks in terms of whether firms (especially outside of the smallest and largest firms) would have sufficient capacity and understanding to effectively manage the compliance function.

3.5 Information and support for navigating the process

It is clear that **most of the firms felt that they lacked sufficient information to easily navigate the licensing process**. At the same time, some of the frustrations voiced were 'process-related' (online submission of the form etc). A common lesson for interviewees was that time spent upfront engaging the SRA could have saved time later down the line.

Interestingly, from the sample of eight firms in this study, **the majority did not take full advantage of the support that was available**. A number of firms reported that they were not aware of events / webinars and depended heavily on the written guidance. In one case, the applicant reflected that closer reading of the supporting document might have made it clearer how the firm could engage with the SRA to answer questions. Another firm came across the webinar some way down the line and found it to be extremely useful.

A fairly common picture emerging from the case studies was that, **in the early days, making effective contact with the SRA was difficult**. In particular, firms could not always get satisfactory information about the status of their applications. This caused particular problems for firms trying to communicate to potential investors about progress with the applications.

At the same time, there was a strong feeling that **when firms managed to get through to a named contact at the SRA, this expedited the process substantially**. Having account managers for applicants made a substantial difference to applicant firms because there was **someone at the SRA with an understanding of the specific firm context** and it served to eliminate any feeling of '*going around in circles*'.

As noted above, views on this engagement with the SRA throughout the process were generally very positive. SRA staff were viewed as being helpful and extremely professional – and **a number of the applicant firms went out of their way during the interviews to make explicit reference to help provided by specific staff members from the licensing team**. Having the same named contact where multiple applications were being made was also felt to be extremely beneficial by applicants (*'it makes a big difference'*).

4 The impact of becoming an ABS

This chapter looks at the post-licensing transition to operating as an ABS, including early impacts of being an ABS on the firms. It also discusses the next steps for those firms that withdrew from the licensing process.

4.1 The transition to becoming an ABS

All of the case study firms found the transition to becoming an ABS to be relatively straight-forward. The most substantial impact to date has been on internal processes. In that context, the transition has typically been smooth because of the extent of internal planning during the licensing process. All of the licensed firms reported that they felt well-prepared. One firm compared the transition to being an ABS as having less impact than an earlier move from a limited company to being a partnership.

Apart from bringing in investment, most other planned changes could be introduced in advance of gaining the ABS license. As well as new internal systems, there were examples of firms that were re-branding as an ABS and which were able to develop infrastructure such as shadow websites that could ‘go live’ once the decision was received.

Some of the larger firms have brought in additional capacity to support information and compliance reporting. In one case, this took the form of a junior solicitor as a ‘deputy COLP’ dealing with a lot of the day-to-day groundwork of the role (meaning that the COLP estimates spending just 10 percent of professional time on the role). In another case, a new team has been put in place to support self-reporting, board reporting, keeping policies up-to-date etc. For smaller firms, the impact was less substantial. One firm invested in finance software to support its administration as a direct consequence of becoming an ABS.

The expanded scope of many ABSs has impacted on staff. Some interviewees reported a need for new compliance procedures to be more widely understood and followed across the business than in the past. There were also new challenges for existing legal firms considering expansion into new markets, given variability in the regulatory frameworks underpinning different professions (whether they are outcomes-focused; whether they are regulated at all). This is causing a degree of caution in expansion plans.

4.2 On-going engagement with the SRA

The level of on-going engagement with the SRA in transition from the authorisation to supervision function has been mixed. It has generally been positive, though. One firm reported ‘no bumps in the road’. Another firm made reference to a wider observable shift in its relations with the SRA over the last few years – away from ‘hostility’ (based on an enforcement focus), towards a much more positive and supportive relationship (the SRA providing practical, useful information and building constructive relationships). Relations have not yet been tested in the ABS context in most cases.

One firm reported difficulties in identifying appropriate reporting channels into the SRA for issues such as new schedules of directors’ interests, new registered offices and business interests.

A couple of firms reported **issues with approval of new directors or legal officers**, again primarily related to the length of time taken and lack of communication about when a decision would be made. In one case, there was some debate internally about how long was reasonable to expect a new COLP/COFA application to take (it took six weeks reportedly in this case). The issue was that the new legal officer was due to start in post very shortly after approval was eventually received, creating uncertainty for the firm. In another case, a new board member was scheduled to be approved at the next board member, but the firm was concerned that close to 30 days after making an application for pre-approval it had heard nothing. In neither case was there evidence of approval not being received in time.

4.3 Early impacts of becoming an ABS

As most of the firms have only been relatively recently licensed, there are few substantive impacts beyond those relating to internal procedures etc. A couple of firms have brought in additional investment already, but this was lined up in advance of the ABS application. In one case, the ABS process was undertaken as a joint investment. Achieving the license therefore enabled a substantially new business to be formed.

Generally, the case study firms entered the ABS licensing process with more organic plans for bringing in future investment. In some cases, potential investors were identified and the firms had initial dialogue while the application was ensuing, but **the ABS licensing process was more aligned to the prospect of gaining investment *in general*, rather than being linked to specific investors.**

The lack of substantial impact on the ABS firms in the months since being licensed is unsurprising. It is largely in line with each firm's strategy. **Almost all firms talked about a five-year horizon for growing their businesses or evolving their service offer.** A number of firms were spending time settling-in new processes before embarking on more substantial changes. A few firms reported that they **expected significant developments during 2014** (new investment; new skills being brought in), but, in terms of accessing new markets (an ambition of almost all of the firms interviewed), this was very much seen a process of medium-term evolution.

There are some early indications that where firms have re-branded, customers have responded positively to the prospect of wider services being delivered under new umbrella service providers – but this is typically in its early stages and the feedback is largely anecdotal.

4.4 Reflections on the added value of being an ABS

There was a clear consensus among the case study firms that the market for the provision of legal services is at a point of radical change, and that the ABS model offers the best-fit for remaining competitive and taking advantage of new opportunities. **Irrespective of the challenges faced during licensing, all firms reported that they would undertake the process again.** As noted earlier, a couple early applicants reflected that, in hindsight, they may have waited before making the application, but there was no debate about the value of the license when set against costs.

The case study firms offered the following views on what would have been the likely next steps if the ABS route was not available. These can be understood in relation to three levels of importance of the ABS model to the development of the firms' future plans:

- *Firms whose existence depends on the ABS model:* One interviewee argued that without the ABS route there would have been no firm, given that its entire proposition was based on the coming ABS model (going back to 2004). One of the firms that withdrew from the process said that '*the availability of the (ABS) licensing process set the ball rolling*' for bringing in the substantial investment to grow the firm into new markets. Without the ABS model there would be no investment.
- *Firms for which growth would have been curtailed or more uncertain without the ABS model:* Three of the case study firms would probably have continued in their traditional markets. One firm reported that it would have tried growing, but would have been likely to be constrained by the cost of outsourcing legal work to other firms. Another firm would have continued as an LLP. This would have constrained growth, but they would have looked to bring in an additional Partner over time. A third firm would have been prevented from moving into new markets. It would have been extremely difficult to bring in the wider skillset underpinning diversification without the ABS model.
- *Firms for which the ABS route has a more marginal impact:* One firm would have remained as a limited company. It would not have been able to take advantage of the tax benefits afforded by being an ABS. Another would have taken out a commercial loan to

invest in growth, but this would have been less cost-effective than bringing in investment directly as an ABS.

4.5 Next steps for firms that withdrew from the process

Both of the case study firms that withdrew from the ABS licensing process were faced with external challenges that prevented them reaching the end of the application process. In neither case did there appear to be a fundamental barrier to successfully completing the process. Both firms could potentially reapply to become ABSs and, in at least one case, were confident that the investment of time in the initial application would stand them in good stead for reapplying (as one interviewee reported, '*we've broken the back of it*'). Importantly, **the perceived benefits that drew these firms to applying to become an ABS in the first place remained as clear as they were at the start of the process.**

The impacts of withdrawing from the process have been mixed. One firm that was growing its legal offer alongside other professional services has been able to continue developing organically, including providing some legal services in the unregulated sphere. For the other firm, expansion plans will simply happen over a longer time period.

Annex 1 Case study topic guide

A. Introduction and background

1. Introduce the study. Remind interviewees that interviews are confidential. As necessary, confirm:

- Our understanding of the firm's activities (services provided)
- The interviewee's role and main responsibilities within the firm
- The timing and timescale of the ABS licensing process in the context of the firm (including when the firm was licensed or the point at which it withdrew from the process).

B. Rationale and drivers for becoming an ABS

2. As necessary, please provide an overview of the firm context and situation before entering the ABS licensing process? Explore:

- The nature of any legal services previously provided (whether reserved or non-reserved activities were provided directly by the firm; whether other legal firms were contracted by the firm or worked in partnership with the firm etc.)
- Whether there was a pre-existing plan or strategy to enter (or develop) the market for providing legal services – and/or whether a plan was developed for the purposes of the ABS licensing process
- The perceived importance to the firm (strategically) of being able to provide new legal services, to gain new investment or to further develop existing services – and how integral ABS licensing was to these plans.

3. What was the rationale for becoming an ABS? Explore:

- The key factors, drivers or catalyst that led to the firm entering the licensing process.
- The timeframe for internal planning before starting the licensing process and any key considerations that formed part of any early internal discussions.
- The nature of any pre-application engagement with the SRA (e.g. contacting the professional ethics helpline) and if/how this informed planning

4. Did you have clear expectations of the benefits that might result from an ABS license? Conversely, were there any upfront concerns or uncertainties – and were these realised or unfounded? Please explain. Explore:

- Whether representatives of the firm attended any of the SRA's information events or webinars and the extent to which these provided useful clarity around ABS licensing.
- The use of other external advisors or consultants before starting the licensing process.

C. Experience of the ABS licensing process

5. What are your reflections on the licensing process as a whole? (*Note, confirm, as necessary, the licensing process followed by the firm*). Explore:

- What worked well and what worked less well.
- For firms that withdrew from the process: Explore why and which point the firm withdrew from the ABS licensing process. Gauge, in overall terms, the extent to which the interviewee believes that withdrawal related to the licensing process itself (how it was structured, the requirements it imposed) as opposed to the specific firm context (issues relating to the firm or its plans).

6. Was the overall licensing process proportionate in terms of the time taken and the inputs required? Explore in relation to:

- The interviewee's perception of the level of complexity of the proposed firm structure.

- Perspectives on the length of the process given the level of complexity of the firm. Was it reasonable? If not, why not?
7. At the start of the process, did you consider yourself to be fully (or sufficiently) informed about what the licensing process would entail and the resources required? On reflection, what, if any, additional insight would have been useful upfront? Prompt in relation to:
- Key information sources / information the firm found useful
 - Any perceived gaps in information about the process / requirements
 - For firms that withdrew from the process: Whether there was a perceived need for more information in certain areas in order to make an informed decision about whether to enter the licensing process.
8. Was there sufficient information and support available to navigate the licensing process? Prompt in relation to specific sources of information:
- Guidance on completing the application form
 - Contacts with the ABS team at the SRA
 - Events and webinars.
9. Discuss the nature of any direct engagement with the SRA during the licensing process. Prompt:
- To what extent did the SRA provide sufficient support at each stage of the licensing process?
 - What, if anything, could the SRA do differently? Explore the clarity and timeliness of communications etc.
 - For firms that withdrew from the process: Was any feedback the SRA might have provided during the process clear and, in the interviewee's view, reasonable? If not, why not? If relevant, was there sufficient opportunity to follow-up or challenge any assessments made by the SRA during the process? Please explain.
10. Was it clear to you *why* certain information was required as part of the process? Were the rules and requirements that you had to comply with reasonable and understandable given the regulatory backdrop? Explore:
- Any specific elements that were felt to be problematic, disproportionate, or especially difficult to comply with
 - The interviewee's understanding of the SRA's potential scope for flexibility and where the process was determined by statutory requirements.
11. The licensing process has changed in response to early feedback (*and the interviewee firm may have direct experience of the old or new process*). How clear and useful is the risk-based approach followed by the SRA? Explore:
- The firm's understanding of risk-based regulation (drawing, where relevant, on other regulatory contexts that the firm may have operated in)
 - The impact – if any – of the risk-based licensing process on the firm's operations, policies, procedures and plans.
12. Were there any changes to the proposed firm structure or business plan during the licensing process? To what extent were these a consequence of the need to meet ABS licensing requirements or driven by other factors? Please explain. Explore the impact of these changes on the firm.
13. To what extent was the resource impact of the licensing process proportionate and reasonable? Confirm, as necessary, the firm's own assessment of the costs entailed in the licensing process – and the source(s) of any major costs attributed to the process. Explore:
- How firm distinguishes between costs that are a direct consequence of the process and those relating to day-to-day business.
 - Views on application fees – noting the relationship between upfront application fees and screening fees.

- The relationship between external costs (e.g. advice and consultancy) and internal costs.
- How the (presumably) one-off costs related to the licensing process balance against anticipated (or achieved) business benefits post-licensing – to date and/or in the future.
- The commercial impact of on-going costs of being an ABS (including any perceptions of restrictions)

D1. Impact of becoming an ABS (for case study firms successfully completing the process)

14. How smooth has the transition to becoming a licensed ABS and operating as an ABS been? Has this been a major or minor shift for the firm (operationally, organisationally etc.)? Explore:

- Any preparatory work that needed to be undertaken – and the extent to which steps could be taken even before the licensing process was completed. What could and could not be achieved before the licensing process was completed (constraints, uncertainties, risks)?
- The business impact of any issues or challenges regarding the transition
- Further engagement with the SRA moving from its authorisation function to its supervision function.
- Lessons for other firms and for the SRA about how to ensure a seamless transition to operating as an ABS.

15. *Acknowledging that the firm may only recently have been licensed as an ABS*, what, if anything, is the firm doing differently since becoming an ABS? What are the most important or significant changes or developments that are a direct or indirect consequence of having an ABS license? How significant has the impact been to date and how significant do you expect it to be over the next 12 months and next 5 years? Prompt in relation to:

- The types of services offered
- How services are provided and innovation in the provision of legal services
- The growth of the firm and entry into new markets.
- Impacts on clients (*especially among recognised bodies becoming an ABS*)
- Impacts on firm staff – notably in the context of the responsibilities of compliance officers (COLPs/COFAs).

16. Are there new opportunities for the firm that flow *directly* from having an ABS license (opportunities that would not have been available without becoming an ABS)?

- Explore the nature of these opportunities. Explore if and how the firm is positioning itself to exploit these opportunities (i.e. the status of future plans).
- Discuss the specific ABS characteristics that underpin these new opportunities.

17. Are there challenges or unintended consequences of becoming an ABS? Explore:

- The nature of these challenges and how they have been addressed / are being addressed
- Lessons for other firms or for the SRA.

18. To what extent has becoming an ABS afforded the opportunity for additional investment in the firm? To what extent is it likely to do so in future? Prompt in relation to:

- How any planned additional investment is being used?
- The impact of additional investment to date?

19. What would you have done if you had not become an ABS? To what extent would it have constrained or limited the growth, sustainability or future direction of the firm? Were there other avenues for developing the firm that you were looking at or might have chosen?

20. Knowing what you know now, would you embark on the ABS licensing process again? Please explain. From, what you have learned, would you expect the process to be easier if you undertook it again? In what ways?

20. Do you have any other comments or observations?

D2. Next steps for firms that withdrew from the process (for case study firms that withdrew)

21. Have you considered / are you likely to consider re-applying for an ABS license? Explore:

- The factors that impinge on such a decision
- Any perceived 'structural' barriers to becoming an ABS
- Understanding or expectations of the extent to which re-applying would be able to build on work undertaken first time around.

22. How, if at all, has withdrawing from the ABS licensing process impacted on the firm? Gauge whether the impacts are major or marginal in scale. Explore the impact on the firm's business strategy and plan.

23. Were there benefits from participating in the process, even though the firm ultimately withdrew? Please explain. Prompt in relation to the firm's systems, procedures, plans etc.

24. Have any alternative routes been followed to achieve the objectives that led to the firm considering the ABS route in the first place? Please explain.

25. Do you have any other comments or observations?