

# Hitting the brakes

The delay of ABS day is not only disappointing to those businesses keen to get started, it is at odds with the government's economy-boosting objectives – so why has it happened?

**Stuart Bushell reports**



The announcement last week that the SRA will not be able to regulate alternative business structures (ABSs) from 6 October as planned will strike many as a curious development. The government wants it to happen, as does the Legal Services Board, Law Society/SRA and all the other regulators, not to mention the dozens of companies and individual entrepreneurs who had 6 October 2011 as the central date in their business plans. The due date has been in place for months without any significant opposition, yet we are now told that it may even be 2012 before the SRA can license its first ABSs. How did we get to here? It brings to mind the advent of Britain's first motorway, the M6, which was opened in 1958 to much fanfare, then immediately closed for resurfacing.

The official reason given for the delay in the SRA version of ABS is the lack of parliamentary time available to pass a crucial statutory instrument. However, there are two points of contention outstanding between the SRA, LSB and Ministry of Justice which need to be resolved before a new ABS start date can be determined. The first issue is the destination for appeals by ABSs against SRA decisions. The LSB wanted these to go to the First-tier Tribunal, but in March the Law Society/SRA decided to insist upon the Solicitors Disciplinary Tribunal being the forum. The LSB is unhappy with this and takes the view that its relative 'lateness' is the reason for the delay. The SRA certainly decided to push their prerogative late in the day, but was it really that late?

An arguably more significant difficulty has arisen with respect to the Rehabilitation of Offenders Act. There is a list of exceptions to the convictions which are deemed to have been 'spent'. The MoJ

produced a list of ABS-related exceptions, which included HOLPs and HOFAs, but not external investors. As a recent debate in the House of Lords made clear, such an exception is needed to prevent external investors in ABSs from failing to disclose convictions for fraud. All of this has been known for years, and brings to mind the Bar's dire warnings in 2005 that ABS invited 'Al-Qaeda law'. This makes it curious that the MoJ failed to include this part of the exception in the original draft of the exception order.

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Meanwhile, the Council for Licensed Conveyancers (CLC) has patiently gone through the process of becoming an approved regulator under the LSB, then a licensing authority, then agreeing to the SRA's preferred start date for ABS. It now finds itself as the only regulator in a position to regulate ABSs from 6 October. The Legal Services Act is crucial to the CLC's development plans and its 1,000 practitioners, and it will be hoping that the LSB is not tempted to move back the ABS start date to accommodate the SRA. The board must already be annoyed at the SRA for its part in frustrating the achievement of the 6 October start date and will be desperate to ensure that it doesn't slip into 2012, given that ABS is its single most important objective.

## Holding back the economy

It is often forgotten that the Legal Services Act exists as much for economic reasons as for legal regulatory ones. It is designed to stimulate the growth of the legal services sector by innovative new businesses. When the current government came to power it was pressured by a number of its own backbenchers to scrap or at least delay ABS and the decision to press ahead, to stimulate the economy in the longer term, was a brave one.

However, the delay in the introduction of ABS will be working against this aim. Perhaps only the SRA knows how many ABS projects are on the blocks and awaiting their start date – indications have been made that there has been a significant amount of interest from all sorts of businesses, existing firms of solicitors not least among them. As a result of the current hiatus, business plans will have to be rewritten, loans deferred, employment contacts put on hold, launch events cancelled, and much more. And one wonders what will become of the new SRA handbook, COLP and COFA and the conversion period from LDP to ABS. None of this is helpful to another of the government's objectives, namely to give enterprise precedence over bureaucracy. Red faces and apologies seem to be the order of the day at present.



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