

The Jury of The Scottish Parliament is Still Out On Reforming Legal Services

I have read with interest, as no doubt have others, the Stage 1 Debate in the Scottish Parliament on the Legal Services (Scotland) Bill and sought to determine where we are now on the question of Alternative Business Structures (ABS).

On a cursory glance, it may seem that it is now on its way as all major parties have agreed for it to be passed at Stage 1.

But on closer examination there are serious reservations being expressed most notably by the Conservatives, Liberal Democrats and Labour. Indeed it could be said that while conceding to passage at Stage 1 the jury of the Scottish Parliament is still out notwithstanding the somewhat bullish opening of the Cabinet Secretary for Justice. For example, Robert Brown of the Liberal Democrats had this to say “On behalf of the Liberal Democrats I am prepared to offer support for the general principles of the Legal Services (Scotland) Bill at Stage 1, but only on the basis that a fundamental rethink is required on some of the details which might involve substantial and radical surgery of the Bill at Stage 2. At this point we make no commitment to support the Bill at Stage 3.”

All of the above of course follows on a heavily qualified Justice Committee Stage 1 Report of 12 March 2010, the Convenors being Bill Aitken, Conservative, and Bill Butler, Labour.

The Debate also signalled that the headlong rush towards legislation based on a business mantra generated by the OFT, Consumer Focus and Which, will not do. Through representations of many solicitors, either individually or through their organisations and representing a wide variety of practices and the voting convulsions of the Law Society, the Debate demonstrated that many MSPs and their parties are now fully appraised, especially those who are not lawyers, of the other principles which must be considered for legal services and ultimately the administration of justice. As one MSP stated, echoing the views of many lawyers, legal services is not the same as “selling cornflakes or yoghurt”. Irrespective of commercial goals there are values which are crucial to our democratic society. We recognise that, for example, education and health are not the servants of commercial interests. So too with the administration of justice. The values which should be present are independence, confidentiality, avoidance of conflicts of interest and access.

So where are we now in the debate, moving forward to Stage 2? It is clear that it is not really going to benefit consumers. The OFT, Scottish Consumer Focus and Which, the champions of the cause of the consumer, came up with no evidence whatsoever before the Justice Committee that ABS would give the consumer any greater access. They have also not subsequently done so. Indeed the Scottish Government is grappling with the disadvantage to the consumer of, for example, the absence of a guarantee fund. There is also no evidence that ABS will benefit rural or city practices or law centres. There is also no evidence that it will benefit areas of practice with which the public are normally

acquainted. What ABS comes down to is a benefit for certain commercial practices and their clients who wish to compete with other firms outside of Scotland and can only do so if they have outside investors. The evidence is therefore that we are only dealing with a niche, albeit an important area of practice, in which a few firms are involved. Yet to cater for them we are seeking to put forward permissive legislation which any lawyer will confirm is the most dangerous kind, untried and untested regulations. We are unable to identify the regulators or their number and are only providing for a paltry sum of £100,000 as the proposed cost of the regulatory changes - and within that an even more paltry sum for monitoring compliance – as detailed in the Financial Memorandum and the Cabinet Secretary's contribution to the debate. At the same time we are opening the door and exposing the Scottish public to unqualified practitioners and commercial organisations who have not demonstrated any appreciation of the values necessary for the administration of justice other than commercial ones. We are also opening up legal services not only for money laundering by nefarious individuals but also potentially giving them a handle on those very legal services.

Let's hope the Scottish Parliament, especially the Scottish Government, continues to listen so that we have the fair and balanced legal services crucial for the administration of justice and our Scottish citizens. We as lawyers must continue to promote the values which we bring before every client to the parliamentarians.