



RESPONSE TO LSB CONSULTATION PAPER ON REGULATION OF SPECIAL BODIES/NON COMMERCIAL BODIES

INTRODUCTION

1. This is the response of the Bar Standards Board (BSB) to the LSB's Consultation Paper on the Regulation of special bodies/non-commercial bodies.
2. The BSB is particularly interested in the subject of this consultation because many barristers provide pro bono legal services through, or to, not-for-profit (NFP) organisations. The BSB is keen to ensure that it regulates barristers in such a way that
 - (1) appropriate regulatory protection is enjoyed by those who benefit from such pro bono services from barristers; but
 - (2) regulatory structures do not provide unnecessary barriers to the provision of such pro bono services from barristers.
3. Finding the right balance between these two considerations is not always easy. In the long term, the solution adopted by the BSB will be strongly affected by the regulatory framework to which NFP legal service providers are subject.
4. It is likely that, should the BSB's licensing application be approved, we will at some point regulate NFP providers and other special bodies. In the current Handbook consultation (at page 50) the BSB says the following:

Section 106 of the Legal Services Act envisages that licensing authorities for ABS entities may make rules allowing them to modify their normal licensing rules in relation to certain "special bodies", which would include for example trade unions or not-for-profit bodies. Such bodies are currently benefiting from a transitional period during which they are not required to be licensed under the Act. However, once these transitional arrangements end, it is possible that some may seek to be regulated by the BSB, such as not-for-profit organisations offering pro bono services.

We have reviewed our draft rules for approving and supervising entities and we do not think there is likely to be a need for us to amend our rules for special bodies and

it would be disproportionate to operate a special regime for these organisations alone. They would of course be able to apply to be regulated by the BSB in the normal way, providing that they fit our profile as a specialist regulator.

QUESTION 47: Do you think that any requirement in our draft rules is inappropriate for special bodies? If so, what type of modification do you think would be appropriate?

KEY POINTS OF OUR RESPONSE

5. We note that the LSB proposes, in the autumn of 2012, to start work on the regulation of general legal advice, with a view to deciding whether general legal advice should become a reserved legal activity.
6. We believe that for many NFP legal services providers the great majority of the legal services they provide is general legal advice. If the provision of general legal advice were to become a reserved activity this would have a profound impact on NFP legal services providers and would have profound ramifications for the regulation of legal services.
7. If the transitional period were to end before it were clear whether legal advice was to become a reserved legal activity, NFP providers would face the prospect of two major changes in regulatory environment in a short period of time.
8. The consultation paper does not identify any evidence that, as a matter of fact, consumers are suffering harm because of the present transitional arrangements.
9. Accordingly we consider that the best solution would be to defer the ending of the transitional arrangement until a decision has been taken as to whether general legal advice should be a reserved activity. Only once that decision has been taken can a lasting, as opposed to temporary, regulatory framework be devised.

THE SPECIFIC ISSUES

- (1) **To what extent do you think that the current non-LSA regulatory frameworks provide fully adequate protection for consumers**
 - (2) **Do you agree with the LSB's assessment of the gaps in the current frameworks?**
 - (3) **What are the key risks to consumers seeking advice from non-commercial advice providers**
10. We take these points together.
 11. We agree that as a matter of theory the current non-LSA regulatory frameworks have potential gaps of the type described. We agree that the NFP sector has no motive or incentive to cut corners with advice or to provide inappropriate services

since it is not seeking to make a profit, but we also agree that this does not entail that services will always be of an appropriate quality.

12. We are not persuaded that as a matter of fact there is evidence of an unacceptable level of risk to consumers at present.
13. As always stricter regulation would reduce risk, and very strict regulation would eliminate most risk, but an increased burden of regulatory oversight would almost inevitably reduce the extent of provision. In the current economic climate any contraction in the provision of free or almost-free legal advice and assistance would be highly undesirable.
14. The LSB accepts (paragraph 5) that NFP regulation should be “rigorously proportionate” and we agree. The essential question is whether it is appropriate to impose that sort of regulatory regime now, with a serious risk that the regime will have to be changed (and extended) to accommodate legal advice shortly thereafter, or whether it would be better to act once, when it is clear what activities are to be subject to regulation.

(4) What are your views on the proposed timetable for ending the transitional protection

15. We agree that transitional provision should not end *before* April 2014.
16. However we think that it should not end before it is clear whether general legal advice is likely to become a reserved activity.

(5) Should we delay the decision [on] whether to end the transitional protection for special bodies/non-commercial bodies until we have reached a view on the regulation of general legal advice?

17. Yes. Otherwise, if general legal advice does become regulated, there will be excessive regulatory churn.
18. Many NFP providers provide predominantly non-reserved legal services. If there is a new licensing regime we anticipate that many of them may decide to restrict their activities to general advice in order to avoid the burden of the regulatory net. If it were then decided to regulate general advice there will have to be a second round of reorganisation. We do not believe that this valuable but fragile sector should be subjected to two rounds of disruption and reorganisation.

(6) Do you have any comments on the Impact Assessment?

19. No.

(7) What are your views on allowing special bodies/non-commercial organisation to charge for advice? What do you think are the key risks that regulators should take into account if these bodies can charge?

20. We have no in-principle objection to NFP organisations charging a fee for advice or other services. The BSB is not aware of any significant risks in this area, although special bodies will need to ensure they avoid holding client funds (or have the

properly regulatory arrangements in place if they wish to hold client funds). The BSB is conscious of the fact that a number of these bodies need to charge a modest sum in order to cover running costs. If these bodies are prevented from doing so then there is a risk they will leave the market and access to justice will be hindered.

(8) What are your views on our proposed approach to allowing a full range of business structures?

21. We agree

(9) Do you agree with our analysis of group licensing

22. Yes. We agree that group licensing would tend to lead to regulatory duplication and/or conflict, and we therefore agree that it is undesirable.

(10) What are your views on these issues that may require changes to licensing rules?

(11) Are there any other areas where the LSB should give guidance to licensing authorities?

23. We take (10) and (11) together.

24. We agree with the LSB's analysis of these issues.

Bar Standards Board