



Regulation of special bodies/Non-commercial bodies

CPAG response to LSB consultation

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**Child Poverty Action Group
94 White Lion Street
London N1 9PF
www.cpag.org.uk**

Background

CPAG welcomes this opportunity to respond to the LSB's consultation paper on the regulation of special bodies/non-commercial bodies.

CPAG is a small registered charity that promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. CPAG has sought to relieve poverty through a variety of means, including producing publications, delivering training, lobbying for legislative change, giving second tier advice and bringing test cases in social security law.

CPAG is also a company limited by guarantee registered in England.

CPAG takes on a small number of test cases each year, roughly 10, and we have a contract with the Legal Services Commission in public law. Other than in our test case work, we do not provide advice directly to members of the public. We do not hold client money.

CPAG provides telephone advice to advisers for 2 hours a day on 5 days a week, using funding from the John Ellerman Foundation and HMRC. This is 2nd tier work to other organisations.

We employ 25 staff, including 4 welfare rights workers and one Advice and Rights Manager who provide advice to advisers, training to advisers, and publications in social security law. We also employ one solicitor who undertakes test case work in social security law. CPAG also has an office in Glasgow. It carries out similar work to the London office, save that it does not employ a solicitor or carry out test case work.

CPAG has a board of trustees with 11 members.

We have addressed some of the consultation questions directly, and have made some other comments.

1. To what extent do you think the current non-LSA regulatory frameworks provide fully adequate protection for consumers?

We believe there should be an evidence based approach to potential additional regulation of Not for Profit organisations carrying out reserved legal activities. The consultation document has identified some risks to consumers but nothing in the way of evidence that would require the kind of upheaval required by an organisation like CPAG should we be obliged to come within the 'entity regulation' envisaged in the LSA.

CPAG has an internal complaints procedure which is provided to clients and advisers. We are also governed by our trustees, by the Charities Commission, and by Companies House. We produce audited accounts annually. We have a finance director who oversees CPAG's finances.

We also have to meet requirements set by the Legal Services Commission in relation to the quality of our work and have professional indemnity insurance that covers claims of up to £2 million, and covers training and legal publications as well as advice work. We receive grants from a variety of funders including HMRC, the Scottish Government and charitable trusts, all of whom require evidence of good governance and effective management of staff and activities.

CPAG provides second tier advice and training to advisers. That means that the advisers we advise work for organisations which themselves are subject to regulation via similar mechanisms.

2. Do you agree with the LSB's assessment of the gaps in the current frameworks?

We agree with the assessment of the gaps in the current frameworks to a certain extent, but we think it overestimates these. For instance it does not mention that many of these organisations will also be companies who are subject to the requirements of Company's House, and that the Charities Commission is also concerned with the financial conduct of charities. It does not deal with the LSC's role in the oversight of the quality of advice via contractual requirements and quality marks. Again, no evidence has been produced of harm experienced by the users of the services of the 330 or so organisations that would require a licence.

An organisation such as CPAG is subject to oversight by a number of bodies, which are not co-ordinated. Some of their functions could overlap, or even conflict with each other.

We are concerned about the potential cost of regulation; the figures of £2,000 or £1,200 are substantial sums of money for an organisation of CPAG's size, which already has to meet practising certificate fees in respect of its solicitor.

3. What are the key risks to consumers seeking advice from non-commercial advice providers?

In our view, the biggest risk to claimants seeking advice in the present climate is that they will not be able to find a provider, or if they do, that the organisation will close before their matter is concluded. It is difficult to see how greater regulation by the LSB will assist with funding problems.

We disagree with the other risks identified at p 4 of the consultation paper; there did not appear to be any evidence in the Frontier Economics research of poor financial management or lack of appropriate controls, or poor service quality. Most of the organisations this regulation is aimed at are likely to be similar in structure to CPAG in that they will be charities and companies limited by guarantee, who will be complying with stringent financial requirements and producing audited accounts each

year. They will have complied with strict auditing requirements via LSC contracts or Quality Marks for many years. Further regulation is not needed.

4. What are your views on the proposed timetable for ending the transitional protection?

In view of the pressures facing organisations of the kind the LSB is seeking to regulate, and in our own cases do not believe that the proposed regulation would provide any further protection for users of CPAG services we would argue that transitional protection should be extended indefinitely.

Alternatively, transitional protection could be retained indefinitely for organisations carrying out such low volumes of reserved legal activities that the burden of additional regulation would be completely disproportionate.

5. Should we delay the decision of 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?

We do not believe it is appropriate for general legal advice to be brought within the definition of reserved legal activity without further consultation and clear evidence of need, costs and benefits of such an massive expansion in regulation, which in most cases would be additional to existing regulation.

Other comments

We are very concerned about the additional burden that will be placed on CPAG should we require to be licensed. We believe that our work on reserved legal activities is already subject to sufficient regulation via the contractual requirements of the LSC (under which all our litigation is carried out) and the regulation by the SRA of the staff carrying out that work. The entity of CPAG is subject to regulation by the Charity Commission and Companies house. Our work is subject to substantial scrutiny by our funders and users. We do not believe the case has been made out that further regulation is needed.

We believe some of the proposals reflect a misunderstanding of the roles of trustees within the voluntary sector. The proposed regulation of CPAG as an entity would result in our trustees being regulated by the LSB, and being held responsible for the reserved legal activities that are carried out. This is not appropriate or proportionate for an organisation like CPAG or many other charitable organisations.

Our trustees are volunteers whose role is to set the strategic direction of the organisation and ensure it meets its charitable objectives. They are not involved in operational matters, this is the proper function of the employed managers. There is a real risk in the proposals that this distinction, which is essential for good governance of the charity generally, will be blurred or compromised. Further, the need for

licensing and to meet criteria of the LSB will act as a deterrent to people volunteering as trustees, further undermining good governance.

There is a real danger therefore that proposals whose objectives are to improve governance and provide protection for service users could actually have the opposite effect.

About CPAG

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Edward Graham
Advice and Rights Manager
Child Poverty Action Group

94 White Lion Street

London N1 9PF

tel: 020 7837 7979

fax: 020 7837 6414

email: sclarke@cpag.org.uk

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