

# The response of the Advice Services Alliance to the Legal Services Board's discussion paper "Wider Access, Better Value, Strong Protection"

## 1 Introduction

- 1.1 The Advice Services Alliance (ASA) welcomes the opportunity to respond to this discussion paper.
- 1.2 ASA is the umbrella organisation for independent advice networks in the U.K. Full membership of ASA is open to national networks of independent advice services in the U.K. Currently, our full members are:
  - adviceuk
  - Age Concern and Help the Aged
  - Citizens Advice
  - DIAL UK (the disability information and advice service)
  - Law Centres Federation
  - Shelter
  - Shelter Cymru
  - Youth Access
- 1.3 Our members represent some 1,700 organisations in England and Wales which provide a range of advice and other services to members of the public. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising.
- 1.4 With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care.
- 1.5 Our response will focus on questions 26 and 27 - concerning the future regulation of special bodies. In answering these questions, our aim is to highlight problems and issues that have arisen in the current regulatory regime and, sometimes, to suggest ways of dealing with them.
- 1.6 A draft of this response was sent to appropriate member networks (adviceuk, Citizens Advice, Law Centres Federation, Shelter and Shelter Cymru), and we have discussed its content with some of them. However, please note that this response does not necessarily represent any individual member's view.
- 1.7 We note that you are proposing to address special bodies in further consultations and look forward to working with you on this. Further, we note your intention to establish an ABS Implementation Group. ASA would be very willing to take part in these discussions.

## 2 Background to the advice sector

### *Diversity of the sector*

- 2.1 The advice sector is very diverse. Of the 1,700 organisations mentioned above, some 400 have contracts with the Legal Services Commission (LSC) to provide legal aid services.

- 2.2 We estimate that about 100 of these organisations currently employ solicitors (or other authorised litigators) and carry out reserved activities. In relation to organisations under the "ASA umbrella" this breaks down roughly as follows:
- 58 Law Centres
  - 20 Citizens Advice Bureaux
  - 20 adviceuk members
  - Shelter and Shelter Cymru (both national organisations)
- 2.3 This number is likely to increase as a result of Legal Services Commission (LSC) reforms.
- 2.4 Most NfP organisations which carry out reserved activities also provide many other services: counselling, information provision, campaigning, policy work, generalist, financial and health advice. It is one of the strengths of the sector that we can provide a range of services that (often disadvantaged) people need.
- 2.5 Within the relatively small group of organisations which employ solicitors, there is significant diversity. Some organisations, for example Law Centres, focus most of their resources on specialist legal advice and representation, activities which should be covered by legal services regulation with oversight by the Legal Services Board.
- 2.6 However, for other organisations the provision of legal advice and representation is a relatively small area of their work. Such organisations have a greater focus on other activities which should not come within the remit of a legal services regulator.
- 2.7 It is important that these differences are taken into account.
- Multiple regulation*
- 2.8 Any regulatory system should also take into account the many ways that NfP organisations are already regulated.
- 2.9 Most NfP organisations which provide legal services are registered charities and companies limited by guarantee and therefore already regulated by the Charity Commission and Companies House. However, there are exceptions, for example two Law Centres are Industrial and Provident Societies.
- 2.10 Organisations providing immigration advice are regulated by the OISC and those providing financial advice are regulated by the Financial Services Authority.
- 2.11 A substantial number of organisations are subject to quality assurance auditing under the LSC's Specialist Quality Mark or General Help Quality Mark. In addition, advice networks require their members to meet minimum membership requirements.
- 2.12 The resources required to meet existing regulatory requirements are already substantial, particularly for small organisations. There is significant concern within the sector about LSC proposals to charge organisations for Specialist Quality Mark audits. Similarly, the OISC is currently consulting on charging agencies that they regulate.
- 2.13 The cost of regulating the NfP sector should be affordable and proportionate to the risks presented. Access to justice for some of the most disadvantaged people may be threatened if the burden of regulation is too high.

### **3 Special Bodies: Questions 26 - 27**

*Question 26: What are the risks to the consumer associated with the delivery of legal services by special bodies and which more general risks are less relevant to these bodies?*

- 3.1 NfP organisations represent a relatively low risk to regulators. Most organisations do not charge for their services and people working in the advice sector are generally motivated by values rather than financial reward.
- 3.2 However, the current regulatory framework as it applies to NfP solicitor agencies is unsatisfactory. It is the employed solicitors and not the organisations they work for that are regulated, and there is little clarity about exactly what they are responsible for. Further, that responsibility has not always been aligned with the authority necessary to ensure that regulatory requirements are met.

3.3 It seems to us that the development of entity regulation provides the opportunity to resolve many of these issues. In the context of an NfP organisation, a clear regulatory framework is important and can help to deal with conflicts such as:

- pressures from funders not to act in clients' interests.
- potential conflicts between the client's interests and the interests of the organisation (or parts of it).

*Question 27: Is it in the consumer interest to require special bodies to seek a licence, and if so, what broad approach should licensing authorities take to their regulation?*

3.4 In view of our response to Question 26, we consider that it is in the consumer interest for special bodies to be required to seek a licence. We suggest that group licences to cover, say, members of the same network may be appropriate in some circumstances, especially if this helps to reduce costs.

3.5 Any framework for licensing NfP organisations should make it clear:

- who is responsible for meeting regulatory requirements
- what services are regulated.

#### **Who is responsible**

3.6 One suggestion is that responsibility for meeting regulatory requirements should be shared by

- the Trustee Board/Company Directors (or some of them) and
- someone with a HoLP-type role (with a HoFA-type person where a client account is maintained)

#### *Board responsibility*

3.7 In NfP organisations it is the Board that has ultimate responsibility for the governance of the organisation and it seems appropriate that they share responsibility for compliance with legal services regulation. However, we are concerned that not all Trustees will want or be able to take on this responsibility and therefore some organisations may prefer to appoint specific Board members to take on this role.

3.8 This proposal raises the issue of "fitness to govern". Our suggestion is that Board members who take on regulatory responsibilities should, in addition to the requirements of the Charities Commission and Companies House, not have been struck off or barred from practice by a legal regulatory body. We do not consider that it is practical to require that the responsible Board member(s) are themselves solicitors.

3.9 It is also necessary to consider sanctions for Board members who fail to meet their obligations. The sanctions need to be sufficiently serious to deter wrong-doing.

#### *HoLP-type role*

- 3.10 We consider that NfP organisations would benefit from having someone in a HoLP-type role with responsibility for ensuring compliance with legal services regulation and a responsibility to disclose non-compliance to a licensing authority. It is most likely that this person will be an employee. Therefore, it is important that anyone undertaking this role should have sufficient authority within the organisation to ensure that requirements are met. We anticipate that this role will be similar to the role of "Senior Solicitor" in many Law Centres.
- 3.11 For most organisations the HoLP will be a legal professional meeting the regulator's minimum requirements for practice. However, there may be a need for flexibility. For example, some NfPs have found it difficult to meet the requirement for a 3-year post qualification solicitor and have needed to recruit less experienced solicitors who have been granted a waiver by the SRA.

### **What services are regulated?**

- 3.12 As we have already stated, many NfP organisations provide a range of services, not all of which can or should be regulated under the LSB framework. Whilst some organisations, such as Law Centres, focus mainly on reserved and unreserved legal activities, there are other organisations for whom the provision of reserved legal activities is a very small part of their work.
- 3.13 One option would be to consider requiring organisations to create an internal ring fence between their regulated activities and their non-regulated activities. We propose that such a ring fence should protect clients of the regulated service and ensure that:
- confidential information about clients should not pass outside the ring-fence (this could involve ensuring that IT and accounts functions are properly separated within and outside the ring-fence)
  - there should be clarity within the organisation on both sides of the ring fence about the obligations of those within the ring-fence to comply with regulatory requirements.
- 3.14 We do not think that it would be necessary or desirable to require organisations to create separate legal bodies, as long as the licensing body is satisfied that the arrangements for the ring-fence are sufficiently strong. As we have already stated, one of the strengths of the sector is that we can provide a range of connected services to our users.
- 3.15 It will be necessary to consider what activities should be included as part of the regulated services. One option might be to extend regulation to all reserved and non-reserved legal activities within an organisation. This would have the advantage of greater clarity for clients about whether or not they are protected by legal services regulation.
- 3.16 However, there may be circumstances where the licensing authority will consider it sensible to modify this requirement in certain cases. For example, this might be appropriate where nearly all of an organisation's work involves non-reserved legal activities (e.g. information, helpline services and generalist advice) with only a very small legal department engaged in reserved legal activities. In such a situation, it may be proportionate to regulate only the work of the legal department. It would, of course, be essential that clients are at all times clear about whether they are protected by legal services regulation.

## 4 Conclusion

- 4.1 The future regulation of NfP organisations raises a number of complex issues. We hope to work with our relevant members (adviceuk, Citizens Advice, Law Centres Federation, Shelter and Shelter Cymru) and the Legal Services Board to resolve these.

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