



Response to LSB Consultation paper on the regulation of special bodies/non-commercial bodies that provide reserved legal activities

Date to submit evidence: 5 pm 16th July 2012

1. AvMA

Action against Medical Accidents (AvMA), established 1982, is a UK charity specialising in advice and support for patients and their families affected by medical accidents. Since its inception AvMA has provided advice and support to over 100,000 affected by medical accidents and succeeded in bringing about major changes to the way that the legal system deals with clinical negligence cases and in moving patient safety higher up the agenda.

2. AvMA response to consultation

(the page numbers refer to the pages in the consultation document)

3. Page 6. To what extent do you think the current non-LSA regulatory frameworks provide fully adequate protection for consumers?

The regulatory frameworks that have grown up around these organisations do not take into consideration the level of legal work now permissible. Thus while we support light touch regulation there should be some requirements (such as minimum levels of professional indemnity insurance cover) that are universal regardless of the type of organisation and cost in order to protect consumers. The Current lack of strict control leaves worrying gaps in some areas. Bringing all providers of legal advice under one regulatory framework would be very sensible. For instance clients who have a complaint arising out of provision of legal services need to have one route through which to complain. Clients should not have to approach several agencies before finding out where to lodge their complaint.

However, a balance must be struck between maintaining high standards in the Not for Profit (NFP) sector and avoiding creating a heavy bureaucratic burden. Many of the poorest clients are assisted by law centres. Law centres do not have the resources that law firms have to cope with large volumes of paperwork and complicated regulation (such as now operates in the area of Legal Aid). Increasing costs of regulation may lead some NFP organisations to withdraw from the provision of legal services to some of the most poor and vulnerable members of society

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

Yes - In as far as our knowledge of other organisations' regulations extends.

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

A. Culture – many of these organisations grew up as general advice providers, the relationship was strictly two way between the client and the advice giver. Legal advice is distinct from general advice with consequences for inaction such as missing court deadlines, limitation dates and responding to correspondence in a timely fashion. When providing legal advice there must be an awareness of working with many other organisations, including the court, and another party's solicitors

B. Underfunding, personnel – may result in over-reliance on volunteers and short hours coverage. There may be times when the advice service is not operating during usual office hours.

C. Underfunding, plant and equipment – leading to lack of vital tools such as case management soft ware and on line research facilities

However while these risks are present there are also highly efficient law centres who aim to provide at least as good, if not better, service for their clients than commercial practices. In the best NFP organisations the emphasis is on providing the best possible legal advice before considering profit

6. Page 10 - What are your views on the proposed timetable for ending the transitional protection?

The time table should be manageable for NFPs if their comparative lack of resources (both human and financial) are taken into consideration. Given that proviso the timetable should be workable, provided the regulating authorities publish the draft regulation proposals in plenty of time for a further consultation on the detail.

7. 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?

No. While the transitional period should come to an end in April 2014 the category of reserved legal activity should not be broadened to include general legal advice at the same time. This will allow the new regulations to come into force and any problems ironed out before the numbers of NFPs who have to become regulated greatly increase. If general legal advice is to be classified as a reserved legal activity in due course the number of NFP organisations requiring a licence will expand. The burden of this increased regulation may affect the service the NFP organisations can provide to their clients. However it is in the interests of client protection that all organisations providing legal advice should be subject to regulation and after the transition period has ended and the new regulations bedded down Legal advice should also be categorised as a reserved legal activity

8. Do you have any comments on the impact assessment? In particular do you have any evidence about the likely positive or negative impacts of the changes set out

in this documents and/or information about the diversity of the workforce or consumers that use special bodies/non-commercial organisations?

In our view the initial impact on the organisation will be by way of resources generally – that is time and money to put in place systems that comply with the regulation required. This will have an effect on the organisations themselves and in turn a disproportionate effect on those with protected characteristics because they are represented in greater numbers among the employees of the organisations. It is significant that those with protected characteristics are more highly represented in NFP organisations providing legal advice and other reserved activities than in private legal practice (both solicitors' firms and barristers chambers). Arguably these people are already adversely affected by receiving lower pay and lower status than those in private practice. Thus to impose onerous duties on NFP organisations which may restrict the work they can afford to do may add to the disadvantage experienced by those individuals.

A similar effect could be experienced by clients (or consumers) of the NFP organisations. If increased regulation leads to a reduced service provided by the NFPs then there may be an adverse impact on those with protected characteristics. This is because as a group those with protected characteristics are people who make disproportionately high usage of NFPs and with little opportunity (either because of where they live or their very limited financial resources) to go elsewhere for legal advice.

- 9.** Page 13 - What are your views on allowing special bodies/non-commercial organisations to charge for advice? What do you think are the key risks that regulators should take into account if these bodies can charge

NFPs should be allowed to charge for advice

Key risks include, failure properly to advise clients of charges and overall costs, exclusion of consumers who have no ability to pay (a means test may be required, subject to the philosophy of the NFP organisation), the overheads of instigating a costs regime outweigh likely benefits, accounting irregularities

It is important that NFP organisations are not only allowed to charge but to enter into funding partnerships with other organisations and/or private sector businesses. Fee sharing could allow organisations to overcome some of the resourcing issues - so for example an NFP organisation could represent a client at an inquest but in order to commence a civil claim, the case could be taken over by a private practice to take the case forwards, in due course recovering the NFP fees up to the point of transfer. There could also be relationships forged to the benefit of consumers with private sector firms that will enhance the work the NFPs can do and introduce people with different expertise to the clients' benefit.

Charging for services, whilst the NFP retains the right not to recover its costs at the end of a civil matter, for instance, means that the NFP can generate funds that are ploughed back into the services offered, so widening its services' impact

- 10.** What are your views on our proposed approach to allowing a full range of business structures

With appropriate (but not too burdensome) regulation we are in favour

11. Page 15 -Do you agree with our analysis of group licensing?
Yes

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