



## **Response to LSB consultation - Regulation of special bodies/non-commercial bodies**

**July 2012**

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## Introduction

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### 1. Introduction

**1.1** Citizens Advice welcomes the opportunity to respond to this consultation Paper on the regulation of special bodies / non-commercial bodies. The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. The service aims:

- to provide the advice people need for the problems they face; and
- to improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of nearly 400 independent advice centres that provide free, impartial advice from more than 3,000 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups.

### In 2011/12 the Citizens Advice service

- helped over **2 million** unique clients
- had over **13.4 million** visits to Adviceguide (our public advice website)
- had over **5.5 million** contacts with clients
- advised on over **6.9 million** problems

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## General Comments

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The LSB's paper raises some very important issues in relation to the potential risks to consumers from developments in the regulatory regime. We offer some suggestions based on the experience of the Citizens Advice service and the clients who use it. We have responded in turn to the questions posed in the paper, please see below.

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## Answer to specific questions

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### 2 Consumer protection issues

- 1. To what extent do you think the current non-LSA regulatory frameworks provide full 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.**

**2.1** We believe that current non-LSA regulatory frameworks can, and in many instances do, provide robust protections for consumers. This is based on our experience of operating a comprehensive membership scheme built on clear client protection principles and based on accepted quality standards.

**2.2** All bureaux are required to comply with our membership scheme which covers:

- Quality of advice
- Organisational standards
- Governance
- Financial management
- Planning and managing resources
- Operational management
- Training and development
- Networking and partnership
- Complaints, suggestions and positive feedback
- Client centred service
- Case management

**2.3** All bureaux are regularly audited against organisational and quality standards, including quality of advice. We are confident that our membership standards in many areas meet or exceed the proposed regulatory standard.

**2.4** We accept that not all legal advice provided by special bodies is monitored in this way and therefore the provision of reserved legal activities by special bodies is clearly not without risk. The key challenge of regulation in this sector will be to ensure a proportionate response to those risks. Regulatory changes will have been a success if they offer effective protection for consumers, whilst not unnecessarily reducing the availability of predominantly free legal advice provided by the NfP sector.

**2.5** This will be achieved if regulation is built on, and complements, the existing membership requirements and other quality marks as well as the regulatory oversight of solicitors delivering reserved legal activities through special bodies.

**2.6** We do recognise that regulation as it currently applies to special bodies is unclear for both the sector and consumers. It is often not apparent how the rules should be applied in NfP organisations. Clarity on where the responsibility for regulatory compliance sits within NfP organisations would help to ensure that compliance is properly embedded within their culture.

**2.7** The risks identified in the paper, namely, governance and funding, sustainability, lack of alternative providers and quality are all key challenges for the sector. However, we do not accept that these are unique, it appears to us that similar risks also apply to commercial bodies.

**2.8** In terms of the quality of advice provided by special bodies, we do not accept that there are greater risks inherent in the provision of reserved legal activities in special bodies compared to commercial providers. In fact, Frontier Economics<sup>1</sup> point out that 'specialist (LSC) contract files handled by NfP agencies scored significantly better than solicitors' contract files....(and) that NfP agencies scored more highly than solicitors on every criterion of the individual peer review criteria.'

**2.9** Funding is clearly a challenge for the NfP sector. However, in the current financial climate, it is impossible to say whether commercial firms or NfP organisations are more or less likely to close due to financial problems. The key issue is the effectiveness of arrangements which are in place to ensure that clients are protected in such an eventuality.

**2.10** Lack of alternative provision in the case of closure is a problem, but whilst there are clearly instances where the closure of organisations outside the current regulatory framework has caused detriment to clients, it should be noted that membership organisations such as Citizens Advice do provide protection and can intervene in the case of insolvency.

**2.11** Under our membership scheme, Citizens Advice works closely with bureaux to assess organisational risk. Where significant risks are identified, Citizens Advice offers support to mitigate these. In the event of insolvency, Citizens Advice intervenes to protect clients interests and to maintain a service wherever possible.

**2.12** We accept that our membership scheme is voluntary and does not cover the whole of the sector, however we believe strongly that regulation could and should be designed so that it can incorporate such protections into the regulatory regime rather than overlaying them.

**2.13** We do not understand the rationale for identifying 'gaps' in paragraph 15 of the consultation paper. For example, it is suggested that the fact that Citizens Advice does not specify that bureaux must employ a solicitor is somehow a failure of current arrangements. The consultation paper deals specifically with special bodies providing reserved legal activities. It is therefore irrelevant to this particular consultation whether Citizens Advice requires all bureaux to employ a solicitor. Where CABx undertake reserved legal activities they do employ a Solicitor because only solicitors can provide such services. However, litigation is seen as an additional service over and above the core service of providing information and general advice. Whether or not an individual bureau employs a solicitor, the terms of the membership scheme ensure that all staff, both paid and voluntary must be appropriately trained for, and supervised in, the roles they undertake.

**2.14** Similarly, it is equally true that Law Centres Federation (LCF) does not require Law Centres to hold indemnity insurance. They do not need to specify this as the Solicitors Regulation Authority (SRA) Indemnity Insurance Rules require solicitors to hold adequate insurance. Therefore, although not specified by the LCF, Law Centre clients still have the benefit of such protection.

### **3 Ending the transitional period.**

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

**3.1** We support the proposal to delay ending transitional protection until April 2014. To end the protection earlier would risk adding significant regulatory change to the challenges organisations will

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<sup>1</sup> 'Understanding the supply of legal services by 'special bodies' - A Report Prepared For The Legal Services Board' September 2011 – p.202

face adapting to reductions and / or ceasing of legal aid in April 2013 on top of wider reductions in funding.

**5. Should we delay the decisions 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?**

**3.2** There are strong arguments for delaying the end of transitional protection until a view has been reached on general legal advice. The regulatory changes will impact on many more NfP organisations than under the current definition of reserved legal activities. The implications of the proposed regulatory regime need to be properly understood by the advice sector as a whole, rather than just those currently undertaking reserved legal activities.

**3.3** If the LSB goes ahead and ends the protection before a decision has been reached on general legal advice, it is essential that there is agreement to revisit the regulatory arrangements to ensure that a proportionate approach is taken. Disproportionate regulation of the advice sector could push many organisations to a point where the only possible response would be to stop providing advice at all. The risk of consumer detriment and reduction in access to justice is high.

**6. 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 document and / or information about the diversity of the workforce or consumers that use special bodies/non commercial organisations.**

**3.4** The impact assessment does not consider the impact of bringing the relevant parts of the NfP sector into the current regulatory regime on general advice providers. We seek reassurance that a further impact assessment will be undertaken and that flexibility will be maintained regarding the approach to regulation of activities which may be brought into the definition of reserved activities in the future.

**3.5** Impact assessment identifies the indicative cost of regulation to the sector. It suggests that it would cost in region of £1m to licence 300 organisations, with additional annual fees. The impact of similar costs for the entire advice sector would appear likely to be many times this amount, and we consider such sums would be beyond the reach of most agencies.

**3.6** An assumption has been made that organisations will be able to afford the cost of regulation. The rationale for this assumption is not clear, given that the paper also identifies that the sector is under considerable financial pressure. The impact assessment does not deal with the very real risk of NfP organisations withdrawing from reserved legal activities due to the initial cost of regulation and the costs of on-going compliance. This again would reduce access to justice for the most vulnerable groups who tend to use NfP agencies.

**3.7** Where bureaux employ solicitors who undertake reserved legal activities, this generally forms a small proportion of their work. We have serious concerns, based on information provided to us by bureaux, that the cost and additional resources required to obtain and maintain a licence, would lead to withdrawal from this work and therefore reduced access to justice for some of the most vulnerable in society.

**3.8** The assumption that there would be little additional work for special bodies on the basis that solicitors are already regulated, seems to undermine some of the arguments that clients are facing significant detriment due to the lack of entity based regulation. We cannot really comment on this

assumption without sight of draft guidance to licensing bodies. There is not sufficient information provided about how regulatory processes would be adjusted to adapt to the sector. We presume that this would be available in guidance provided by LSB to licensing authorities. We ask that draft guidance is the subject of further consultation with the NfP sector.

**3.9** As the affected organisations have not been identified, and therefore the impact on their clients cannot be assessed either, it is not possible to adequately comment on the equality impacts of the proposals.

**3.10** Future risks arising if similar regulatory arrangements were to apply to all general legal advice also cannot be quantified currently. The extent of the sector has not been identified, nor has general legal advice been sufficiently defined to an extent that the full impact could be estimated. This is particularly true when considering the risk of reducing the supply of advice delivered by organisations for which advice is only part of the services they currently offer, for example, AgeUK, RNIB.

## **4. Removal of unnecessary regulatory restrictions**

### **7. 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?**

**4.1** We support the LSB view that there is no justification for blanket prohibition on the NFP sector charging for legal services.

**4.2** The NfP sector should be free to deliver paid for advice in order to support free advice services and also to allow their key client group to access value for money legal advice where free advice is no longer available. In the interim, the LSB should exert influence to discourage regulators from unnecessarily withholding waivers to allow this to happen.

**4.3** The sector faces unprecedented pressure on funding and will need to explore all avenues (subject to membership rules) to ensure that services are maintained. The sector has huge potential to innovate in order to provide services for its key client groups, who may be overlooked by more commercial providers as potential profit margins may be low.

### **8. What are your views on our proposed approach to allowing a full range of business structures?**

**4.5** We support the suggestion of allowing separate businesses to provide paid for services. The NfP sector will need to be particularly mindful of the interplay between free and paid for services. The ability to run separate businesses would ensure that there would be absolute clarity for clients about which services they were being charged for and which were free. We also feel that such separation would provide protection and clarity for the funders of free services. They would be able to see that they were getting value for money and that their funding was not being used to subsidise other services.

## **5. Group licensing**

### **9. Do you agree with our analysis of group licensing?**

**5.1** We do not agree with the analysis of group licensing.

**5.2** We feel that there are ways in which the benefits of current membership schemes can be brought into the regulatory regime and can be compatible with the LSA.

**5.3** We cite the example of the regulation of Immigration and Asylum advice by the Office of the Immigration Services Commissioner (OISC). CABx have since 2002 been authorised to provide level 1 immigration advice under a group scheme of regulation agreed with OISC. This was based on an agreed framework covering fitness to practise, training, information materials, case checking, auditing and complaints. This agreement has enabled significantly wider provision of free immigration advice than a would otherwise have been the case. A memorandum of understanding underpinning the agreement maintains OISC rights to monitor the effectiveness of Citizens Advice's oversight and thus the protection of clients. We cannot see why a similar agreement cannot be reached in respect of legal services.

**5.4** The consultation mentions group licensing under the Consumer Credit Act 1974 which requires that any business or organisation that helps people with their debt problems must be licensed by the Office of Fair Trading (OFT). Citizens Advice holds a group licence for the provision of debt advice with the OFT. All accredited member bureaux can apply to be added to the group licence so that they can 'carry on the business of debt-adjusting and debt-counselling and 'provision of non-commercial credit information service including non-commercial credit repair'. Licensing is automatic as long as they do not charge fees or commissions or engage with ancillary credit activities. We understand that AdviceUK operate a similar scheme.

**5.5** The scheme is underpinned by Debt Management Guidance which all bureaux comply with. This arrangement has worked well, protecting clients and enabling wider provision of debt advice than would have been the case had the group licensing scheme not existed. Again, we cannot see why a similar agreement cannot be reached in respect of legal service.

**5.6** At the very least, the regulatory regime should operate a system where equivalent membership requirements could be 'approved' by the regulator and the organisation could be in effect passported to compliance for the relevant requirements. Where membership requirements comply with all regulatory rules a straightforward passporting to licence should be possible.

**5.7** The licensing authority would then only need to assess compliance with the rules once, and unnecessary duplication or conflicts in requirements could be avoided. The regulator would remain responsible for ensuring ongoing compliance and dealing with any breaches.

**5.8** Where the membership organisation undertakes regular audits, the result of these could be reported to the regulator and subject to sample checks by the regulator.

**5.9** In respect of paragraph 48, we do not understand the logic that an umbrella organisation would not be able to agree modifications to the rules for all members. Any modifications which may be required to 'take into account existing requirements for structures and processes' would apply to all members and should therefore be identical for all members. The implication is that such modifications would need to be considered for each and every application for a licence. We feel strongly that this adds unnecessary complexity and cost to the process.

**5.10** Regulators should be encouraged to ensure that as much central negotiation is undertaken with membership and umbrella organisations as possible, to minimise the burden of the application process to special bodies for individual frontline NfP agencies. Cost savings to the regulator which would stem from a centralised approach could then be passed on to individual special bodies in the form of a reduction in application fees.

**5.11** Such an approach would also help to ensure a consistent approach to modifications identified as desirable in paragraph 54.

**5.12** In respect of activity based regulation, we understand the intention to make regulation targeted and proportional to the activities actually being undertaken. However, we are concerned about how this will work in practice. This approach could actually lead to more complex and costly issues to be resolved when agreeing licensing arrangements and also dealing with disputes about activity definitions.

**5.13** Changes in activities undertaken would need to be written into the licensing conditions. Far from reducing the burden of regulation, we fear that activity based regulation, as set out in the paper, could potentially increase it.

**5.14** A simpler approach may be to identify high risk activities, and exclude these if the organisation had no intention of undertaking them, e.g. Will writing. Standard approaches could then be taken to these activities, for example, clearly setting out the required indemnity insurance requirements for Will writing, if these were higher than, for example, welfare rights law.

## **6. Content of licensing rules**

### **10. What are your views on these issues that may require changes to licensing rules?**

**6.1** We welcome the suggested flexibility in the operation of compensation arrangements and accounts rules, along with acknowledgement that a HoFA may not be required where the licensed body does not hold client money.

**6.2** We also welcome the acknowledgement of the extent to which uncertainty about costs will deter special bodies from appealing decisions. We believe that for the appeals process to work effectively for the sector this needs to be addressed.

**6.3** In addition to changes in the licensing rules, guidance should be provided as to the evidence needed to demonstrate compliance and the process used to agree compliance. As stated before, a passporting arrangement whereby central agreement on compliance can be agreed with membership organisations, would be more proportionate than a case by case approach. This will also prevent inconsistencies of approach developing.

### **11. Are there any other areas where the LSB should give guidance to licensing authorities?**

**6.4** There are strong arguments for a lighter touch regulatory approach for NFP organisations with consequently lower licence fees. For many CABx, the future regulatory regime could be disproportionate. Reserved legal activities form a very small proportion of the work undertaken by bureaux. For many, the additional cost in terms both in terms of resources and financial cost of additional regulation would outweigh the benefits of offering these services. It is imperative that the additional costs of regulation are tightly controlled, otherwise it is extremely likely that bureaux will withdraw from the provision of reserved legal activities, to the detriment of clients.

**6.5** In addition to those issues raised in the consultation paper, we would urge the LSB to consider the position of pro bono legal advice. Where solicitors provide legal advice, including reserved legal activities, to a client of an advice agency, clear guidance is needed to ensure that regulatory arrangements were easy to understand and not disproportionate. There is a very real risk that pro

bono provision would be damaged if advice agencies were uncertain whether operating pro bono schemes would require an ABS licence, or how they fitted into the overall regulatory regime.