



**LSB 'Regulation of special bodies/non-commercial bodies'
consultation paper -
CLC response**

The CLC is both an Approved Regulator and a Licensing Authority in relation to conveyancing and probate services.

Executive Summary of CLC Response

We consider that lifting the transitional protection before a determination has been made whether general legal advice should be designated a reserved legal activity will in effect enable the regulation of Special Bodies to be trialled by those bodies supplying services which are currently designated reserved legal activities.

We consider that there should be no restrictions on the nature of business structures and Special Bodies should be able to charge for advice provided.

Provided it is satisfied appropriate processes are in place to identify and mitigate risk, we believe that a licensing authority should be able to issue group licences.

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

- 1.1 We agree that the current rule based frameworks may mitigate some of the risks. However, we do not believe that they provide the full extent of consumer protection needed e.g. professional indemnity insurance and redress provisions are not consistent.

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

- 2.1 Please see above.

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

- 3.1 The key risks are poor technical advice, low service quality, absence of effective redress (currently consumers are not entitled to refer complaints to the Legal Ombudsman nor is there a mandatory requirement for non-commercial advice providers to have professional indemnity insurance - PII). Given that they may be disadvantaged and/or vulnerable, consumers of these bodies are likely to be less able to judge the quality of service, they may assume redress is available (when it is not), and may be unable to make an informed choice. Paragraph 42 of the paper suggests that depending upon the services a Special Body provides, professional indemnity insurance may be deemed 'totally unnecessary'. We disagree. We believe that clients who are vulnerable or disadvantaged are most in need of effective redress which PII cover would provide. Differing risk levels obviously impact upon the PII rates. We suggest that PII is an effective measure of risk, so a higher premium is indicative of increased risk in respect of which consumers (in particular vulnerable consumers) should be properly protected.
- 3.2 We are surprised that the paper does not suggest how closure (particularly it is unplanned) of non-commercial advice providers should be managed. Issues which we believe should be taken into account include:
- management of client matters which are live at point of closure,
 - the storage of archived client matters,
 - the requirement for run off PII (since cover is on a claims made basis),
 - the availability of compensation which can most easier be accessed through grants from a fund of last resort, in particular to alleviate hardship, and
 - the funding of run off PII and/or a fund of last resort.

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

- 4.1 We consider the originally proposed April 2013 timetable should be extended to allow would-be Licensing Authorities of such bodies to determine and implement the appropriate arrangements needed to comply with the LSB Guidance (when published) and their own risk assessments. We therefore consider the revised target of April 2014 to be more appropriate (subject to the caveat provided at 5.1).

Question 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?

- 5.1 Given the likely vulnerability of consumers of these bodies the LSB suggests the application of the regulatory regime should not be delayed. We understand that general legal advice is, by a considerable margin, the service most likely to be provided by such bodies. Although we have reached no concluded view, we believe there is a persuasive argument to be made that Special Bodies providing services currently designated reserved legal activities should be regulated. If, at a later date, general advice becomes a reserved legal activity, then the Special Bodies providing that service will also need to be regulated.

Question 6. Do you have any comments on the Impact Assessment? In particular, do you have any information about the likely costs and benefits 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?

6.1 We have no specific comments.

Question 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?

7.1 We consider that such bodies should be allowed to charge, particularly where current funding streams are restricted or threatened. This should enable them to remain viable. However, this will create risks which the bodies will have to satisfy their regulator have been mitigated (particularly the handling of client money). Further, the underlying purpose/objectives of the Special Body may be changed as a result, though ultimately that is a matter for the Special Body and for its funders/sponsors.

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

8.1 We consider that regulation should be agile and promote provider freedom and consumer choice; in principle, we believe that a Special Body may choose a business structure which best suits its purpose. However, it is for the applicant Special Body to satisfy the regulator that it has identified and mitigated any risks specific to that business structure.

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

9.1 We do not agree. The LSB proposes that group licensing should not be allowed, whilst at the same time advocating that an umbrella body and its structure/process requirements should be taken into account in determining any licence modifications. Transparent group licensing is a proportionate, and flexible, approach to regulation and is not dissimilar from regulation of a practice, where the head office is the primary contact with the regulator. The head office in turn has a supervisory role, and adopts a quasi-regulatory relationship, with its satellite branch offices (which can be subject to regulatory inspection by the regulator). In effect, such provision would mean that should an overarching organisation not become a Licensing Authority, its quasi-regulatory role in supervising individual satellite bodies would be acknowledged within the licensing framework accepted by the regulator.

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

10.1 Financial protection arrangements, accounts and Head of Finance and Administration requirements will vary according to whether or not the organisation holds client monies. Organisations which wish to hold client monies will need to demonstrate they have sufficiently robust governance arrangements and accounting processes in place to protect client monies.

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

- 11.1 Schedule 13 (owner) provisions are likely to be operated in a method different to that applied to commercial bodies; guidance should make it clear which class(es) of persons should be required to satisfy the fit and proper tests.