



LSB CONSULTATION REGULATION OF SPECIAL BODIES/NON-COMMERCIAL BODIES UNISON RESPONSE

Introduction

UNISON is the UK's largest trade union serving the public sector, with members working in the NHS, local government, schools and universities, as well as in the police sector and the electricity, gas and water industries, transport and voluntary sector. Unison as an organisation is inevitably focussed on employment relations, working to protect member's interests in the workplace, including improving working conditions. UNISON also has a comprehensive legal scheme, offering a wide range of high quality free legal services, regardless of the outcome. In particular, our members receive employment advice from branches and regions (through trained union reps or union employees), as well as representation in employment claims through our appointed solicitors and through the work of our in-house legal department. Our legal assistance scheme also covers personal injury claims, some work related criminal matters, wills and conveyancing, as well as a free legal advice for our members, all dealt with through our external lawyers.

We only pursue legitimate claims, ie over 50% merits or more. This criterion allows us to run complex and difficult cases, including borderline and test cases to set important legal precedents. Unlike other legal service providers who often deal with consumers once on an individual case we have a continuing relationship with our members. Our branches and regions are also involved, giving another level of support particularly in employment matters and workplace claims.

The Union legal services model is quite distinct from other special bodies/non-commercial bodies. We are a not for profit democratic organisation, directly accountable to our members through our structures. We run our legal assistance scheme for the benefit of our members not the general public. Our scheme is controlled through our rules, by elected members. Regulation is already in place not least through the Trade Union and Labour Relations (Consolidation) Act 1992, the contract of membership we have with our members through the payment of subscriptions, the rules set out in our Rulebook, and agreed by our members, which is overseen by the Certification Officer, and the TU Code of Conduct. We have strong governance and certain funding sources and so not subject to the same conflicts as other special bodies/non commercial bodies reliant on external funding. We also have significant internal safeguards in place. Branch and regional Union representatives providing general workplace advice and assistance are regulated by such internal and external frameworks, and unlike Claims Management Companies the support given is not done for profit. Our local representatives, being elected by their peers at their workplaces are directly accountable to those they assist. UNISON has training systems in place such as TUC accreditation for representatives to help ensure quality Union assistance by Union

officers, workplace reps and Health and Safety reps. Our legal services are also subject to agreed standards of service, client satisfaction surveys and our own and our lawyers transparent complaints handling processes.

As the paper acknowledges because Union legal services are distinct our exemption under section 15(6) of the LSA applies in relation to “reserved legal activities” such that even once the transitional period for special bodies/non-commercial organisations ends, Unions will be entitled to carry on doing the work they currently do under this exemption in house without the need for a licence. But clearly as such a body, undertaking a wide range of legal services we feel well placed to respond to this consultation and are keen to continue engaging as stakeholders with the LSB as the legal landscape changes, including in relation to the forthcoming review on the issue of special bodies and general legal advice.

Questions

- **To what extent do you think the current non-LSA regulatory frameworks provide fully adequate protection for consumers?**
- **Do you agree with the LSB’s assessment of the gaps in the current frameworks?**
- **What are the key risks to consumers seeking advice from non-commercial advice providers?**

UNISON has been providing high quality, independent legal services to our members and family members for decades, and because of our unique structure (including both the external and internal frameworks referred to above) in relation to reserved legal activities, as set out in the Legal Services Act Section 12, Schedule 2, the exemption under LSA s.15(6) specifically allows us to carry out such work without the need to convert to an ABS. Within UNISON legal work, specifically in the employment sphere, is carried out by our in-house lawyers, who are of course also governed by their own professional regulatory regime.

In relation to other special bodies there may not be sufficient safeguards and to this extent we agree consumers need the protection of regulation. However, we are pleased, the LSB has already recognised in the current economic environment where some such bodies are struggling with their funding, that any over regulation would simply be a burden and may have unintended consequences, impacting badly on access to justice. Such that post any transitional period, it is important for special bodies/non commercial bodies generally to be regulated differently. It should not impose unnecessary cost, inflexibility and complexity. We do not object to regulation per se but clearly would not want the burden of unnecessary regulation on special bodies. We therefore welcome the LSB’s view that the regulation must be targeted and proportionate.

In relation to the licensing authorities and their approach to licensing special bodies/non-commercial bodies again due to their unique position, we believe the licensing arrangements need to be straight forward. There should be a simplified procedure taking into account such bodies’ particular circumstances and the level of risk involved. We are concerned by the fact that there has been reference to the SRA’s licensing procedure for ABSs taking between six to nine months.

We agree that the LSB has identified the main risks to consumers in the consultation paper. Union legal services, being quite distinct from other special bodies/non commercial bodies as outlined above, do not pose the same risks, this having already been acknowledged in the legislation. Please refer to our comments above.

- **What are your views on the proposed timetable for ending the transitional protection?**
- **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?**
- **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?**

We accept there may be problems for some with pressing on with April 2013. We also believe the regulation should not remain outstanding for a significant period of time. As such we believe it would be helpful to the sector generally to have an early indication of and consultation on these matters.

However an outstanding issue is whether “reserved legal activity” should encompass general legal advice. Clearly if it were to be decided as such, it would then be defined within LSA s12, schedule 2, and so would not change the position for Unions. As outlined above the general legal advice we give is distinct, it is focussed on employment advice and assistance, regulated by our external and internal framework.

But as the consultation paper acknowledges it will inevitably have a significant impact on other special bodies/non-commercial advice providers (many of whom do not carry out reserved legal activities but do obviously carry out general legal advice). As such the impact of this change needs to be very carefully considered on a consumer protection vs organisational sustainability basis, and it would be good regulatory practice to await the outcome of this exercise, if the decision would not delay the timetable, before removing the transitional provisions so that one system of regulation alone needs to be considered. Otherwise if the regulation, and licensing regime is, as imagined, to be specific and proportionate then there is a potential risk this may need to differ post this decision on general legal advice if the change does go through.

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

We agree with your analysis of the restrictions on charging for advice. Regulators should allow charging by special bodies/non-commercial organisations for the advice they give, and if any future restrictions were to continue to exist these should be targeted and proportionate. There needs to be flexibility in the voluntary sector in these economic times. We note the LSBs position that these restrictions should be removed now in advance of any decision around transitional protection. We believe in allowing special bodies to charge this may well help alleviate the risks to consumers caused by the funding cuts/legal aid changes. It will increase funding sources, diminish the prospect of bankruptcy, and ensure more high quality advice with income streams assisting with training and staff expertise and retention.

We also agree that the SRA separate business rule is too constricting in the ever changing legal landscape we are in and that special bodies/non-commercial organisations should be allowed a full range of business structures, again with any restrictions to be purely proportionate and specifically targeted where needed.

- **Do you agree with our analysis of group licensing?**

We believe it is entirely appropriate that licensing authorities should take an activity based approach and that it is inappropriate, in a collective group of organisations that are so different and carrying different roles, to have a one size fits all approach. In addition, we accept that a group licensing regime does not easily fit the appropriate licensing regime for legal services.

- **What are your views on these issues that may require changes to licensing rules?**
- **Are there any other areas where the LSB should give guidance to licensing authorities?**

As above, on the basis that there should be activity-based regulation, we also agree that the licensing rules need to be adapted to ensure they are targeted and proportionate for special bodies/non-commercial bodies as set out in the consultation paper.

As acknowledged within the consultation paper, s 15(6) of the LSA provides a specific exemption for trade unions to the extent that even post transitional protection, a union carrying out legal work for its members will not require to be licensed as an ABS thereafter.

UNISON Legal Services

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