



25 July 2012

Our ref: ICAEW Rep 98/12

Mahtab Grant
Legal Services Board
7th Floor, Victoria House
Southampton Row
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By email: consultations@legalservicesboard.org.uk

Dear Mahtab

Regulation of special bodies/non-commercial bodies

ICAEW is pleased to respond to your request for comments to your *Consultation on the regulation of special bodies/non-commercial bodies that provide reserved legal services*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

REGULATION OF CHARITIES PROVIDING RESERVED LEGAL SERVICES

Memorandum of comment submitted in July 2012 by ICAEW, in response to the Legal Services Board consultation paper on the Regulation of special bodies/non-commercial bodies published in April 2012

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper Regulation of special bodies/non-commercial bodies published by the Legal Services Board (the Board) on 23 April 2012, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. A large number of ICAEW members work in or for the voluntary sector, and specifically for charities as employees, volunteers or as professional service providers from practising firms of accountants. All members are bound by ICAEW's requirements for continuing professional development (CPD) confirmed by an annual confirmation of continued competence, whether they are providing their services free of charge or for reward. ICAEW represents its members, and provides CPD resources for them through our Charities Special Interest Group and our Charities Technical Committee. The Charities Technical Committee has been consulted on this response.
5. This response also reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

MAJOR POINTS

Employment of solicitors and barristers

6. We do not think that the mere presence of a solicitor or barrister within Not for Profit Bodies (NFPs) should trigger the requirement to register as an ABS. One solution may be to have clear rules stating that a solicitor or barrister can work in an NFP without the need to register as an ABS provided they do not undertake any reserved activities and therefore confine themselves to general legal advice or 'welfare advice' (see below).

Advice versus legal advice

7. Many charities exist to provide opinion or counselling about what could or should be done by a vulnerable consumer about a situation or problem. The consumer is unlikely to be concerned about whether the advice is technically reserved or non-reserved advice or even whether it is legal advice, or social and behavioural advice. Instead they may categorise advice as welfare benefits advice; housing advice; health advice and so on.
8. Furthermore, a lawyer providing such advice would consider any of these to be legal advice whereas a non-legally qualified advisor (for example a social worker) might categorise the very same advice as welfare advice. Let us assume the example of a welfare charity with 20 employees providing welfare advice. One of the 20 employees is a solicitor providing a small element of reserved work through attending court for social security claimants alongside general welfare advice.

9. If the solicitor remains in situ and ABS registration is required, then proposals would appear to potentially capture all the unreserved welfare advice given by the 19 other non-lawyer employees if that is considered to be legal advice. If correct, we wonder whether sufficient thought has been given to the implications. Virtually all advice given by charities to vulnerable consumers could be the subject of legal services regulation just because they employ a solicitor doing a tiny amount of reserved work. The number of organisations willing to obtain and maintain a licence would reduce once the costs and extent of compliance become apparent, with consequential impact on vulnerable consumers.
10. The remit of the Legal Ombudsman would inadvertently extend beyond *resolving complaints about lawyers* to become a resolver of complaints for social and welfare advice.¹

Positive encouragement in growth of unregulated legal advice or potential extinguishment for many

11. There is a significant danger that the regulatory regime introduced for Not for Profit Bodies will operate to positively encourage the growth of unregulated legal advice and at worst completely extinguish advice for the most disadvantaged consumers within society - see our response to questions 6 and 10 in particular.

Lack of proposed regime

12. There is an assumption underlying all these proposals that the regime introduced will be acceptable fair and proportionate. Until the proposed regime exists at least in draft with an identifiable regulator, then NFPs cannot comment authoritatively on this point and therefore the actual impact upon their activities.

Impact of likely withdrawal of advice services

13. The better focus for the LSB may be assessing the impact of withdrawal / reduction of services for the most vulnerable, who utilise smaller more specifically focussed charities which will then lack the management and financial resources to comply with this new regime, and may elect to close as a result.
14. Longer established and well-resourced charities will be able to cope in some form, but we query whether they will be able to service the increased demand from newly excluded consumers whose only available sources of advice will elect to close.

Charities and their regulation

15. The largest number of NFPs affected by those proposals will be charities, but no indication has been given in the consultation paper that there has been any consideration of the work which is being done on the regulation of charities. For example the report of the July 2012 Charities Review addresses a number of issues also covered by the consultation such as charging by charities and relationships between regulators. The possibility of the introduction of a Charities Ombudsman is also discussed but not recommended due to issues of cost.

RESPONSES TO SPECIFIC QUESTIONS

Q1. To what extent do you think the current non-LSA regulatory frameworks provide fully adequate protection for consumers?

16. We do not think that the Board should be thinking in terms of 'fully adequate' consumer protection, which we believe to represent the kind of counsel of perfection which invites non-achievement at best, but more likely damaging unintended consequences including the

¹ <http://www.legalombudsman.org.uk/>

withdrawal of legal services from many vulnerable individuals currently in receipt of 'adequate' if not 'fully adequate' services from charitable sources.

17. Rather the Board should be seeking to optimise the cost/benefit ratio of regulation against the maximisation of service provision for vulnerable individuals from charitable sources.

Q2. Do you agree with the LSB's assessment of the gaps in the current frameworks?

18. We agree that the regulation of reserved services provided by charities should be improved, to the extent possible but without imposing disproportionate regulatory burdens.

Q3. What are the key risks to consumers seeking advice from non-commercial advice providers?

19. As the research indicates, many NFP organisations act as 'gatekeepers' referring consumers to other organisations more suited to their needs. This may be a more important overall factor than the quality of service per se, but does not clearly feature in the Board's analysis.
20. The key risk to most consumers seeking advice from charities is not a poor service, but the withdrawal of the availability of any service at all due to the absence of funding and/or prohibitive regulatory costs.

Q4. What are your views on the proposed timetable for ending the transitional protection?

21. We do not think that the Board should set a fixed timetable for the ending of the transitional protection, until a proposed proportionate cost effective licensing regime is devised and the impact of this regime on the provision of services has been fully considered by affected charities.
22. We are also concerned that this project appears to have been undertaken without any consideration of the regulation of legal services provided from the public sector and this may require work and therefore have an impact upon timing.

Q5. 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?

23. We believe the decision to end transitional protection depends on the creation and availability of a cost effective and proportionate regulatory regime. The danger is if the regime is inadequately scoped but still introduced, then many organisations may be forced out of existence on day 1 (see our response to Q6) . Vulnerable consumers may then be in a more perilous position than they are at the moment.
24. We understand that the Board are at an early stage in their consideration of the regulation of general legal advice. We will be writing to them separately, giving our early observations. Many charities, not just legal advisory charities, give 'general legal advice' within their areas of specialism, such as:
- Medical charities, on clinical negligence claims and the availability of invalidity benefit;
 - Wildlife and environmental charities on environmental law;
 - Experienced charities in any specialist area advising less experienced charities in any area of operations, including in particular charities law;
 - Any charity providing advice to potential donors on cost effective charitable giving.

25. These are all legal issues, but they are not within the remit of services that a consumer would consider should be reserved to persons within the remit of legal services regulation. If all 'general legal advice' is reserved to entities regulated under the full weight of the Legal Services Act, this is likely to result in an unacceptable reduction in the availability of specialist legal advice from non-legal specialists competent in their own relevant area of the law and whose aim is to serve those in need.

Q6. 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?

26. The impact assessment assumes:

- non- commercial providers will be able to become licenced and regulated for an acceptable cost;
 - we are not sure such an important assumption can be made since there is no draft scheme or regulator for consideration and most of the organisations researched admit they do not understand the full ramifications of the LSA in the first place.
- private market providers provide many of the same services;
 - this may be incorrect since the reason most of these organisations exist is because many customers of NFPs cannot get advice elsewhere.

27. The impact assessment does not take into account:

- the impact upon NFPs that currently provide some element of reserved advice, but who may elect to withdraw such reserved advice in order to escape the additional marginal costs of regulation and secure continued survival.

Q7. 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?

28. The restrictions in charging should be eliminated in principle as soon as possible subject to further work on safeguards. Charities will set their charging structures individually dependent upon consumer need and demand and the ability to charge in some form will enhance the overall availability of advice to vulnerable consumers.

Q8. What are your views on our proposed approach to allowing a full range of business structures?

29. The idea of charities developing law firms as separate subsidiaries is not something we are aware of. Nevertheless the separate business rule may be a consideration and a review is overdue.

Q9. Do you agree with our analysis of group licensing?

30. We consider the most important issue is not group licensing but the development of a clear and proportionate regulatory regime for NFPs.

31. Only when NFPs are aware of the proposed framework can they safely say what the impact will be on the delivery of services and the impact upon consumers.

32. We are not satisfied on the evidence that current arrangements cause significant consumer detriment for the vulnerable, and are concerned that what is proposed may positively enhance

such detriment by increasing costs and positively encouraging many organisations to provide unreserved advice only through non- lawyers.

Q10. What are your views on these issues that may require changes to licensing rules?

- 33.** It appears to us that the Board assumes that charities will become regulated as quasi legal – professional firms (including equivalent requirements for compensation, HOLPs, HOFAs, resolution of conflicts etc) and therefore subject to a very vigorous new regulatory regime.
- 34.** This would require resourcing from already strained budgets which will inevitably result in a reduction of services currently available. We cannot see that an assessment has been made to analyse the **reduction** in services for vulnerable consumers that these proposals will cause.

Q11. Are there any other areas where the LSB should give guidance to licensing authorities?

- 35.** As stated above, we think the better focus may be crafting a likely regime and then assessing the impact of withdrawal / reduction of services for the most vulnerable, from smaller charities who will lack the management and financial resources to comply with this new regime, and who will elect to close as a result.

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