

REGULATION OF SPECIAL BODIES/NON-COMMERCIAL BODIES, CONSULTATION RESPONSE  
FROM FRIENDS OF THE EARTH

Friends of the Earth (FoE) submits this short consultation response following a meeting with representatives of the LSB the previous week, along with a number of other not-for-profit bodies. We reiterate the concerns we expressed in that meeting, which we understand will be taken into account by the LSB as part of the consultation. We submit this further response in writing after the deadline, having been invited to do so by the LSB, as we have only lately become aware of the consultation.

In the interests of sending this response as soon as possible, we are restricting ourselves to a few key comments. We note the statements at paragraph 5 of the consultation that, in the case of non-commercial bodies, it is more than usually important that licensing authorities ensure that any regulation does not impose unnecessary costs, operational inflexibility and complexity and that it is the nature of the body itself, the services it offers and its client base that determines the risk that regulation should target.

In the light of this we wish to highlight that FoE works as a not for profit organisation (with both a charity and limited company arm) aimed at the protection of the environment and the promotion of sustainable development. We currently have a Head of Legal and one other in-house lawyer, supported by interns. The bulk of the work of the legal team is focussed on providing in-house legal advice to the organisation on fulfilling its campaigning objectives, primarily through working with our campaigns and programmes staff.

Within the legal team, FoE operates a Rights & Justice Centre (RJC), which provides legal advice to communities and individuals who wish to take action to protect the environment. We also operate a fortnightly free public advice line and bring litigation (predominantly judicial review cases) on behalf of individuals and communities either pro bono, under a CFA, or through legal aid, as we hold a public law contract with the Legal Services Commission.

Given the 2-person capacity of the legal team at FoE, and the focus on predominantly internal advice, the team is only able to take on an extremely limited number of cases through the RJC, at most 1-2 a year. The team is very unlikely to expand in any significant measure in the foreseeable future, because FoE remains an environmental campaigning organisation with only a small legal function targeted towards achieving its overall goals.

In the light of this, it is our view that the best way of addressing potential risks to clients seeking advice from the RJC is to ensure that the legal team- primarily the Head of Legal- continue to be responsible for the provision of legal advice, rather than the Board/s of the charity and/or limited company or senior management. The RJC holds professional indemnity insurance and the provision of legal advice by its solicitors is regulated both by the Legal Services Commission and the Solicitors Regulation Authority. Extending responsibility for this outwards to other parts of the organisation would not increase the level of protection to our clients because the predominant purposes of both the charity and the limited company do not relate to the provision of external legal advice.

As a result, we feel that the nature of FoE (and other organisations like it) require it to be treated differently to, for example, a body whose primary aim is the provision of legal advice. For an organisation like FoE, it is important to concentrate responsibility for the provision of legal advice on the advice-giving part of the organisation and that entails considering whether the existing controls are sufficient and, if not, what other proportionate action is necessary.

In our view the existing controls are sufficient to ensure consumer protection and access to justice and indeed ensuring access to environmental justice has played an important role in the legal teams' work for many years now. As a result, FoE's Board/s (or other designated managerial body) should be enabled to delegate responsibility for obtaining and complying with the requirements of any licence to the legal unit, on the understanding that the broader organisation will facilitate such compliance to the extent that this lies within its power. Alternatively, any responsibility on the part of the Board/s of FoE or its senior management for the provision of external legal advice could be discharged by receiving a quarterly report from the legal unit on the activities of the RJC. More detailed oversight than this (or responsibility for applying for a licence) would put a disproportionate burden on the Board/s or Senior Management of FoE, given its other activities. Indeed, it might have the possible consequence that the organisation might decide to discontinue providing external advice altogether.

FoE agrees with the proposal in the consultation that other existing rules should not be applied in a blanket fashion to all not-for-profit bodies. In our view the professional indemnity requirements, as well as the solicitors' accounts rules, should be relaxed for an organisation such as FoE given that our legal advice relates to the relatively low risk field of public and environmental law and we do not hold client money.

Gita Parihar,

Head of Legal

Friends of the Earth, 20<sup>th</sup> July 2012