

## **REGULATION OF SPECIAL BODIES/NON-COMMERCIAL BODIES**

Response to the Legal Services Board's Consultation Paper on the regulation of special bodies/non-commercial bodies that provide reserved legal activities

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## **Foreword**

### *Northumbria University*

Northumbria University, in Newcastle upon Tyne, is an expanding multicultural learning community with excellent links with further and higher education, industry and commerce throughout the UK, Europe and beyond.

Northumbria University is the largest research and teaching university in the North East of England. Both research-engaged and business focused, it has become one of the most deeply embedded of all the North East universities in the industrial, professional and commercial sectors and in civic life. Today it performs a leading role in promoting and sustaining the region's economic, cultural, sporting and social wellbeing, with growing recognition nationally and internationally. Its mission is supported by the great strength of its civic partnerships, the achievements and continuing commitment of its graduates and by the vast range and substance of its entrepreneurial, social and cultural collaboration throughout the North East of England.

### *School of Law*

With 94 academic staff, the School of Law at Northumbria University is the largest Law School in the North of England. The School has a professional ethos, a commitment to an excellent student experience and a growing culture of research and scholarship. The School is the proud winner of the National Training Award, the Law Society Excellence Award, and the Attorney-General's Pro Bono Law School of the Year Award, among many others.

The School is renowned for providing excellent legal education and offers the most comprehensive portfolio of courses in England and Wales at both undergraduate and postgraduate levels, including a unique M Law programme which integrates the Qualifying Law Degree with the Legal Practice or Bar Course and a new fully qualifying law degree which includes training to become a solicitor. At postgraduate level, the School offers a full range of professional programmes, including flexible routes for the Graduate Diploma in Law and Legal Practice Course, full and part time Bar Professional Training Course and a wide range of professional and commercial LLMs.

### *Student Law Office*

The multi-award winning Student Law Office is the School of Law's free legal service and one of the leading examples of clinical legal education in the world. The office operates from bespoke premises with client reception, interview and meeting rooms, integrated library and open plan teaching space. It provides a significant amount of the pro bono legal advice and representation in the region and offers deep experiential learning and professional fulfilment to hundreds of law students each year on year 3 and 4 of the M law degree and as electives on professional programmes.

The Student Law Office is not a separate legal entity. It is part of the programme run by the School of Law, which in turn is part of the University. The Education Reform Act 1988 established some universities as Higher Education Corporations (HEC). The University became a HEC in 1989. As a HEC the University is classified as an exempt charity and is therefore a "not for profit body" under the Legal Services Act 2007 benefitting for the transitional period currently afforded to these bodies.

*The author of this response*

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## **Response to consultation paper questions**

We have set out our comments on the consultation questions listed below. We look forward to the Legal Service Board's response.

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

The consultation paper states that whilst regulation should not impose unnecessary burdens, vulnerable and disempowered consumers should not be afforded significantly less protection because of the type of organisation providing the advice. We are concerned that there is a stereotype at play here - that free legal advice equates to poorly thought through, poorly supervised and poorly administered legal advice.

In the Student Law Office (SLO), all students are supervised by a qualified solicitor or barrister with current practising certificates. Some continue to hold roles in practice with local firms, others are part time judges. Some supervisors are also consultants for national and local law firms. The running of the SLO is underpinned by rigorous administrative procedures and controls. There are numerous policies in place. Clients receive comprehensive information about their rights under the retainer including notification (orally and in writing) about the complaints procedure. The SLO has its own manual which is provided to each student. There are currently also three dedicated administrators, a bursary student and two trainee solicitors.

We are concerned that the approach is that all non-commercial bodies work in the same way. The consultation paper notes that the Law Centres Federation does not require professional indemnity insurance and that there is no requirement to have a solicitor at Citizens Advice Bureaux (CABs). In contrast, the University has the benefit of insurance and there are currently 21 solicitors/barristers working in the SLO. Each solicitor is regulated by the SRA. Each barrister is regulated by the BSB.

It also ignores the fact that, because clients are often the most disadvantaged, the legal advice provided by non-commercial bodies is regularly explained in a way that is more accessible for those clients and more attention is paid to ensuring that client's understanding is correct. In the SLO, students are trained to constantly reflect on their own practices and consider their communication skills. Interviewing styles, tone, style and content of correspondence, managing clients' expectations and the difference between empathy and sympathy are just some of the issues that are regularly discussed and assessed. We would argue that the care given to disadvantaged clients can often be at a higher level than that given via a commercial body. There are no financial targets. There is more time to holistically consider the needs of the client. The clinic setting is a much less threatening environment which leads to a more comfortable experience for the client.

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

The LSB comments that it cannot be satisfied that all the regulatory objectives in the LSA can be met. In particular it points to improving access to justice and protecting the interests of

consumers. We would strongly argue that non-commercial bodies providing free legal advice are at the forefront of improving and promoting access to justice. Indeed, the words “pro bono clinic” are often swiftly followed by the phrase “access to justice”. The existence of the LawWorks and Attorney General’s Student Pro Bono Awards is testament to the recognition of this at government policy making level.

The SLO makes a significant contribution to access for justice for local people. It is a full representation service that has been sustained for over 20 years, running up to 300 cases per year for deprived communities. In 2011/12, 176 students have provided over 50,000 hours of free legal work and recovered over £380,000 for their clients. Dwindling numbers of lawyers doing publicly funded work and the limited capacity of CABs means that clients often see the SLO as their only means to access to justice. It, and others like it, is an invaluable resource to those particularly on low incomes and with unmet legal need.

By way of example, the Law School has established successful partnerships with Shelter, Age UK, Ben Hoare Bell LLP, Eversheds and Victim Support with students regularly providing pro bono advice. We have a long running project with Shelter, for example. Complex housing problems are sent by e-mail from Shelter and our students prepare a research report and provide written advice within 3 weeks. As well as being available to 4<sup>th</sup> year students in the SLO, students on the GDL are able to take part in this scheme.

As noted above, non-commercial bodies come in lots of guises and it is not our intention (nor would it be possible) to speak for all. We can only impart our experiences as a University based free legal clinic. We do not see any gaps in the framework for our institution. The examples provided at question 1 illustrate the steps that are taken to protect the interests of consumers. We can provide numerous examples of the way in which the SLO has improved access to justice. If anything, we suggest that non-commercial bodies have been at the forefront of fulfilling the regulatory objectives even before they were put to paper in the LSA.

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

The consultation paper lists a number of perceived risks attached to non-commercial advice providers. We agree that sustainability and lack of alternative providers is a key issue, but an issue for clients generally. This is particularly salient in the light of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and other very significant cuts to funding from hard pressed local authority funders and others as a result of the recession. This of course will have a significant impact on non-commercial bodies. We have already seen a number of non-commercial bodies closing down because of these cuts. This makes it even more important to make sure that non-commercial bodies are not subject to inappropriate, disproportionate and excessive regulation and administrative burden.

It seems strange to suggest that clients will be disadvantaged by non-commercial bodies as it is often these bodies that empower the disempowered and represent the vulnerable.

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

We believe that a substantial grace period is necessary for non-commercial bodies in order to give the licensing authority time to develop a suitable and proportionate regulatory framework. This would also give non-commercial bodies the chance to prepare. Most organisations will

need to consult with external and internal advisors and committees (and in the case of HEC's, Board of Governors and Vice Chancellor's Office) which will naturally take some time.

Prior to the announcement in the consultation paper that general legal advice may become a reserved legal activity, we were of the view that it would be beneficial for a definite date to be set for the expiration of the grace period. However, there is no point in setting a date when it is not at all clear what will and will not be classed as a "reserved activity". Please see our full comments below, at question 4.

At present there is no information stating what the application requirements will be for non-commercial bodies following the expiration of the grace period. We are concerned that there is no information at all as to what the application requirements will, even in simple terms, look like. Information on what the application requirements for non-commercial bodies will be or may be likely to be should be released as soon as practically possible. This would give non-commercial bodies the opportunity to consider what they need to do, the procedures that need to be put in place, and, in some cases, whether they can continue to operate.

In particular, we are concerned about the calculation of fees that non-commercial bodies may have to pay upon application for registration. The SLO does not handle any client money and is a free legal advice clinic which does not make any profit. A burdensome fee would be inappropriate – the fees payable (if any) should reflect the nature of the work undertaken by the particular non-commercial body. If the licensing authority intends to use turnover as a basis for the calculation of fees (as the SRA Fee Policy 2012 dictates for commercial bodies), the definition of turnover in the case of non-commercial bodies should be given careful consideration. By way of example, Northumbria University has a high turnover and if the SRA Fee Policy were to be applied to that turnover the fees would be extortionate and prohibitory.

We are pleased that the consultation paper states that the LSB expects licensing authorities to regulate non-commercial bodies to ensure that regulation is "targeted, proportionate and do not impose unnecessary costs and complexity". We hope that there is no intention to implement application requirements, regulatory administration and fee structures which means that non-commercial bodies will have to cease carrying out pro bono work which benefits our communities so readily. Increased information and transparency is required in order to avoid confusion and a last minute "scramble" to comply with the licensing requirements. Ultimately, we are asking for greater clarification.

We are already concerned that it seems that universities which have legal clinics are going to be forced to adopt an ABS structure which was never, to our view, meant to be an outcome of the LSA 2007. ABS was meant to be about opening up the legal services market, not causing significant problems for educational organisations doing excellent work for their communities and their students. Many non-commercial bodies will not have "owners", "managers" and "shareholders" as defined by the LSA 2007. The SLO has a director (an academic post), and is also under the remit of an Associate Dean, the Dean of the Law School and the University Board of Governors and Vice Chancellor's Office. We would once again respectfully remind the LSB that non-commercial bodies do not just include CABs.

**5. Should we delay the decision of whether to end the transitional protection for non-commercial bodies/special bodies until we have reached a view on the regulation of general legal advice?**

Yes. It seems completely ineffective to end the transitional period when it will be not clear what will be deemed to be a reserved activity. This change will mean that the idea of the “reserved activity” will be meaningless – giving legal advice in any form will require an organisation to become an ABS.

There are some non-commercial bodies that would move away from providing what is currently designated as reserved activities so that they do not need to undertake the substantial consequences that becoming an ABS would have. It is important to note that this would not be to avoid any additional protection for clients, but to ensure the continuing operation of the organisation and the provision of services to clients. The consultation paper notes that extending reserved activities will have implications for non-commercial bodies/special bodies. We submit that that it will have *considerable* implications. The cost and administrative/procedural burden of becoming an ABS will mean that some organisations will merely stop their provision of pro bono advice. This is completely at odds with the idea of improving client choice and access to justice.

We are also concerned that there is no attempt in the consultation paper to explain what “general legal advice” will consist of. Will it cover advice given by students’ unions to their students? Will it cover advice on business structures given by tax specialists? Will it cover the situation where a counsellor passes on “general advice” about the law to a client? We understand that there will be further consultation on this point in the Autumn and we are keen to understand exactly how this would work in practice.

**7. What are your views on allowing non-commercial bodies/special organisations to charge for advice? What do you think are the key risks that regulators should take into account if these bodies can charge?**

It has been a long established principle that the legal advice provided by non-commercial bodies is free. We fear that allowing non-commercial providers to charge is an attempt to sweep up the problems associated with the legal aid cuts. Charging undermines the entire idea of access to justice in this context.

What will the difference between a free service and fee based service be for a client? Will fee paying clients require or expect a service akin to a magic circle firm? How much will the non-commercial body be permitted to charge? Are we looking at means testing? Will this lead to even less choice for clients? These are just a small selection of the questions that arise from this section of the consultation paper.

In the context of law clinics, charging does not seem appropriate and would add a further layer of complexity and administrative burden in terms of accounting. It would also lead to the clinic being seen by the wider university as simply an income generator – something which goes against the regulatory objectives of empowering the vulnerable and improving access to all.

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

We refer back to our answer to question 4.

We are pleased that the LSB recognises that a number of the current licensing rules will require adaptation so that they are relevant and proportionate for non-commercial bodies. The SLO does not have a client account or hold client money. It already has in place a conflicts of interest policy. The definitions of “owners” etc in the LSA do not fit the way the University is set up. There would be little point in having a HoLA. Putting in place a HoLP may be more difficult than expected given a University structure.

Once again, we would encourage the LSB to recognise that non-commercial bodies do not come in a “one size fits all” construction.