

# Regulation of special bodies/non-commercial bodies

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Consultation paper on the regulation of special bodies/non-commercial bodies that provide reserved legal activities

**This consultation will close at 5pm on 16 July**

**This consultation paper will be of interest to:**

Law Centres

Citizens' Advice Bureaux

Community Interest Companies

Approved Legal Regulators

Providers of Legal Services

Legal Representative Bodies

Legal Advisory Organisations

Other Third Sector Organisations

Consumer Groups

Legal Academics

Members of the Legal Profession

Potential new entrants to the ABS market

Think tanks

Political parties

Government departments

Trade Unions

## Table of Contents

Executive Summary .....	1
Background.....	3
Consumer protection issues.....	4
Ending the transitional period.....	7
Proposed date.....	7
An appropriate approach to regulation .....	11
Outcomes for consumers .....	11
Removal of unnecessary regulatory restrictions .....	12
Activity Based Regulation .....	13
Group licensing .....	14
Contents of licensing rules .....	16
How to respond.....	20
Complaints .....	21
Glossary of Terms.....	22
Annex A – Summary of existing requirements (initial analysis).....	24
Annex B – ABS outcomes.....	38
Annex C – List of questions .....	41

## Executive Summary

1. The introduction of Alternative Business Structures (ABS) means that legal services providers with non-lawyer owners and/or managers need to be licensed to provide reserved legal activities. Some organisations, such as not for profit agencies (for example Law Centres and Citizens Advice Bureaux) and Community Interest Companies are given protection for a transitional period, which means that they can currently provide reserved legal activities without a licence. Only the Legal Services Board (LSB) can make a recommendation to the Lord Chancellor that he should end the transitional protection.
2. This document discusses the implications of ending that transitional period, both for the bodies (collectively called “special bodies” or “non-commercial bodies” in the Legal Services Act 2007 (the LSA)) that will then need to be licensed, and for the licensing authorities that will regulate them. **It is important to note that this issue currently only applies to bodies that are providing reserved legal activities.** These are defined in the LSA<sup>1</sup> as:
  - the exercise of a right of audience;
  - the conduct of litigation;
  - reserved instrument activities;
  - probate activities;
  - notarial activities; and
  - the administration of oaths.
3. So an advice agency that does not currently do any of these activities will not need a licence once the transitional period ends. However, the LSB is considering<sup>2</sup> whether general legal advice should become a reserved legal activity. Should this happen, it would have implications for special bodies/non-commercial bodies. The Board will start its work on the regulation of general legal advice in the autumn of this year. However the extended time needed both for policy debate and the statutory process if it concluded that general legal advice should be reserved leads the Board to its current view that it should not delay consideration of when the transitional period should end.
4. There are currently two licensing authorities: the Council for Licensed Conveyancers (CLC) and the Solicitors Regulation Authority (SRA). Both the CLC and the SRA have licensing rules which set out the regulatory requirements on all ABS. Special bodies can ask a licensing authority to change some of its

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<sup>1</sup> LSA Section 12 and Schedule 2

<sup>2</sup> See document: Enhancing consumer protection, reducing regulatory restrictions

rules. This consultation paper sets out the LSB's view on how licensing authorities should approach such requests. It also explains how we expect licensing authorities to regulate special bodies/non-commercial bodies to ensure that regulation is targeted, proportionate and does not impose unnecessary costs and complexity.

5. Non-commercial bodies are not "risk free" simply because of the not for profit nature of their service. But nor does the possibility that they may decide to offer more commercial services in future necessarily mean that, by doing so, they automatically become higher risk. Rather, it is the nature of the body itself, the services it offers and its client base that determines the risks that regulation should target. The fact that their clients are often among the most vulnerable of consumers underlines the need for proper safeguards to be in place. However the risks are rarely identical to or as great as those presented by large scale commercial firms and it is therefore more than usually important that licensing authorities ensure that any regulation does not impose unnecessary costs, operational inflexibility and complexity. The document sets out the Board's clear expectations of a tightly targeted and rigorously proportionate approach.
6. In particular, it is important to note that any restrictions on non-commercial bodies being allowed to charge for services on both a commercial and cost recovery basis are not linked to removing the transitional protection. Those restrictions, where they exist, are imposed by regulators directly and/or as part of membership requirements and can be changed by those organisations. We do not consider that there is a valid policy rationale for imposing such blanket restrictions, even if they can be waived in specific circumstances, particularly at a time when many of these bodies are having their budgets cut and may wish to be able to offer a wider range of services or charge consumers who can afford to pay something towards the cost of their legal advice. This issue is discussed in more detail in paragraphs 34 - 40.
7. Trade Unions that provide reserved legal services to their members also benefit from transitional protection. Additionally, in most circumstances, the LSA<sup>3</sup> Trade Unions will not have to be licensed to provide reserved legal activities to their members even after the transitional period has ended.

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<sup>3</sup> LSA section 15(6)

## Background

8. The LSB has already put forward the view that the transitional protection should come to an end and that special bodies/non-commercial bodies should be subject to regulation where they provide reserved legal services to the general public. In our decision document on guidance for licensing authorities<sup>4</sup>, we proposed that the transitional arrangements for special bodies/non-commercial bodies should remain in place for 18 months after ABS started. We also said that we would consult further on the regulation of special bodies/non-commercial bodies. We have maintained some flexibility in this timetable to ensure that the right approach to regulating special bodies/non-commercial bodies is put in place and that those affected have an appropriate period of time to prepare. Having discussed the implications of licensing in much more detail with representatives of special bodies/non-commercial bodies, we now consider that removing the transitional protection by April 2013 may be too soon and that it would be more appropriate to end it by April 2014. (This is discussed further in paragraphs 17 - 24).
9. Subject to the outcome of this consultation, the next step would be for the LSB to issue guidance to licensing authorities on their approach to licensing special bodies/non-commercial bodies. Only once we are confident that there will be at least one competent licensing authority that will regulate in a targeted and proportionate way for these bodies will we make a recommendation to the Lord Chancellor to end the transitional period. We consider it likely that licensing authorities will need to make changes to their regulatory arrangements in order to give the Board the necessary confidence.

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<sup>4</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/abs\\_guidance\\_on\\_licensing\\_rules\\_guidance.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf)

## Consumer protection issues

10. Our starting point for considering the approach to regulation is the mitigation of risks to the consumer and the potential impact on access to justice. Special bodies/non-commercial bodies often deliver identical services to the same sorts of people as traditional firms. Often those people are some of the most vulnerable and disempowered consumers. So although regulation should not impose unnecessary burdens, we consider that these consumers should not be afforded significantly less protection because of the type of organisation providing the advice. The focus of regulation should therefore be on whether the risks to consumers differ when they receive reserved legal activities from these bodies and, if they do, to identify the role that regulation can play in tackling those risks.
11. Research undertaken by Frontier Economics<sup>5</sup> found that where clients' knowledge is significantly less than that of providers (sometimes called "asymmetric information"), reliance on external funders and the nature of the client base all indicate the need for some regulation of the sector. In addition, interviewees reported that funding is likely to be placed under further pressure in the future. This may lead organisations to face some challenging decisions around options for alternative funding streams (for example charging in some form), changes to business structures (such as mergers or consolidation) and the type of advice they are able to provide.
12. Based on the Frontier Economics' research and consultation with key stakeholders, our own assessment of the types of risks that may be posed by non-commercial providers focuses on three main areas:
  - **Governance and funding:** Unstable or uncertain funding sources, poor financial management and lack of appropriate controls, potential conflicts of interest between funder and provider.
  - **Sustainability and lack of alternative providers:** Potential impact of closure or bankruptcy, lack of arrangements for case transfer, consumers may be disempowered, unable or unwilling to go elsewhere or to complain if something goes wrong.
  - **Quality:** Poor technical or service quality may arise from different training approaches and/or supervision arrangements, lack of expertise in certain areas of law, clients may also be disadvantaged and vulnerable and therefore even less able to judge quality and make informed choices, impact of funding cuts/legal aid changes and significant fluctuations in revenue generally on levels of staff experience (for example the potential for a

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[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/rep\\_lsb\\_special\\_bodies\\_final\\_report\\_07\\_07\\_11\\_stc.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/rep_lsb_special_bodies_final_report_07_07_11_stc.pdf)

reduction in number of legally qualified staff because they are no longer required due to the loss of a legal aid contract).

13. In looking at the case for ending the transitional protection, we have considered the existing regulation of this sector in the widest sense, including:

- protections provided by existing membership networks such as the Law Centres Federation and Citizens Advice;
- Charity Commission requirements; and
- procurement arrangements and the standards imposed by funders such as the Legal Services Commission (LSC) or local authorities.

14. A summary of these requirements is provided at **Annex A**.

15. There is no doubt that for many non-commercial advice providers the existing frameworks already provide some form of quasi-regulation. We have taken this into account in developing our proposals. However, we do not consider that the existing frameworks provided by procurement arrangements or membership structures alone provide sufficient consumer protection for the risks posed. For example, although the Law Centres Federation requires there to be a senior solicitor and have a management committee, there is no requirement to have professional indemnity insurance. Citizens Advice imposes requirements for case management and professional indemnity insurance but there is no requirement to have a solicitor. The Charity Commission's requirements focus on the organisation fulfilling its charitable purpose with the emphasis on structure and governance rather than the services provided or redress for the individual consumer. The LSC's requirements are closely linked to the need to obtain value for money from public expenditure but do not deal with what happens when a firm becomes insolvent.

16. So although there are requirements that may mitigate some of the risks, taken together, they do not provide sufficient assurance that all the risks can be mitigated. This therefore means that the LSB cannot be satisfied that all the regulatory objectives in the LSA can be met, in particular improving access to justice and promoting and protecting the interests of consumers.



**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?**

## Ending the transitional period

17. Only the LSB can make a recommendation to the Lord Chancellor to end the transitional period. In doing so we have to take account of the potential additional burden of regulation but balance that against the current lack of protection for consumers, in particular their inability to take complaints to the Legal Ombudsman. Those consumers are likely to be among the most disadvantaged in society. Because the existing requirements are insufficient in the context of the LSA's regulatory objectives, we still consider that the transitional period should come to an end. The LSA clearly envisaged that special bodies/non-commercial bodies should be regulated as special kinds of ABS and we consider that this regime supported by an outcomes focused licensing framework is the right approach.

## Proposed date

18. We had previously expressed a view that the transitional protection should end 18 months after ABS started – that would be around April 2013. Having now discussed in more detail with representatives of the bodies affected and those that may license them, we consider that there is insufficient time before April 2013 to create an appropriate regulatory framework and license those bodies carrying out reserved legal activities and that the transitional period should end around April 2014. This should allow sufficient time for existing licensing authorities to review and change their licensing rules (if necessary), for potential licensing authorities to apply for designation and for bodies that may require a licence to consider the implications for their organisation.

## Scope of Regulation

19. In considering the approach to regulation of special bodies/non-commercial bodies we are focused on the existing reserved legal activities. Although precise data on the types of activities undertaken by special bodies/non-commercial bodies is limited, from the information we have available, we consider the most relevant reserved activities for this sector to be litigation and rights of audience. However we also think it likely that many and perhaps the majority of special bodies/non-commercial bodies are providing general legal advice in areas such as housing, welfare benefits or debt and may not therefore carry out any of the reserved legal activities.

20. If an organisation does not employ an authorised person (such as a solicitor or barrister) it cannot provide any reserved legal activities. So even if the transitional protection ends it will not need to obtain a licence. Even if an organisation does employ an authorised person such as a solicitor or barrister then it will only have to apply for a licence to be regulated as an entity if it is providing reserved legal activities. This is because the LSA<sup>6</sup> states that an

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<sup>6</sup> LSA section 15

employer is only considered to be carrying out a reserved legal activity if one of their employees conducts a reserved legal activity. However, although the entity will not need to be licensed, the individual solicitor or barrister will remain regulated by the applicable regulator (for example the SRA or the Bar Standards Board (BSB)). Proxy data based upon the location of these authorised persons suggests that approximately 330 organisations are likely to require a licence.

21. The LSB is currently looking at the scope of regulation in the light of our powers to investigate and make recommendations to add or remove reserved activities. Following consultation on this approach, we have concluded that the priority needs to be given to consideration of whether general legal advice should become a reserved legal activity.
22. The Board will start its work on the regulation of general legal advice in the autumn of this year. If, in due course following that investigation, we reach the view that general legal advice should be reserved, this is likely to have a significant impact on special bodies/non-commercial advice providers. That is because all organisations providing services within the definition of general legal advice would then be required to obtain a licence.
23. However, as we have set out in the scope of regulation work,<sup>7</sup> regulation in future will not necessarily have to be done in the same way that it operates in legal services now. In particular, for special bodies/non-commercial bodies, we see this as an opportunity to develop a truly outcomes focused and proportionate approach to regulation.
24. One option would be to delay removing the transitional period until the issues around the scope of regulation are resolved. However that would mean that users of special bodies/non-commercial providers would continue to have less protection than mainstream legal services consumers. However, given the lead time in both policy development and statutory process of any decision on wider reservation, the Board currently considers that the transitional protection needs to be removed more rapidly.

## Impact

25. We have evidence that many of those working in and running special bodies/non-commercial bodies are more likely to include those with “protected characteristics<sup>8</sup>”. We have published an initial impact assessment and a draft equalities impact assessment with this document on our website. In addition, our decision will take into account our emerging thinking on the scope of regulation and in particular whether general legal advice should become a reserved legal activity.

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<sup>7</sup> See document: Enhancing consumer protection, reducing regulatory restrictions

<sup>8</sup> These are defined in the Equality Act 2010 as: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation

26. Although we have limited data about these organisations, the data that we do have indicates:

- the majority are based in London (39%) and urban postcode sectors (46%)<sup>9</sup>;
- in terms of the immediate neighbourhood served, Afro-Caribbean communities (21%), and transient communities (26%) are the largest compared to the location of all organisations who employ authorised persons<sup>10</sup>;
- they are more likely to have Asian/Asian British managerial control (9.3%) than traditional solicitors firms (4.6%) and more likely to have Black/Black British managerial control (6.6%) than traditional solicitors firms (1.8%)<sup>11</sup>;
- they are more likely to have female managerial control (55.4%) than traditional solicitors firms (19.7%). Additionally, women made up 74.6% of paid employees and 67.3% of volunteers in not for profit agencies with legal aid contracts<sup>12</sup>;
- they are more likely to have majority long term ill or disabled managerial control (2.6%) than traditional solicitors firms (0.6%)<sup>13</sup>; and
- they are more likely to have people over 60 in managerial control (25%) than traditional solicitors firms (11%)<sup>14</sup>.

27. We do not currently have data about the consumers that use the services provided by special bodies/non-commercial organisations but will seek to identify appropriate data sources during the consultation period.

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<sup>9</sup> Legal Advice Sector Workforce Surveys, Legal Services Research Centre 2007

<sup>10</sup> LSB analysis using Office for National Statistics and SRA data

<sup>11</sup> Routine Diversity Monitoring of the Supplier Base Legal Services Research Centre May 2011 (tables 2.2 and 2.5) - note that this data refers to "not for profit" agencies with legal aid contracts

<sup>12</sup> Routine Diversity Monitoring of the Supplier Base Legal Services Research Centre May 2011 (section 3) - note that this data refers to "not for profit" agencies with legal aid contracts

<sup>13</sup> Routine Diversity Monitoring of the Supplier Base Legal Services Research Centre May 2011 (section 4) - note that this data refers to "not for profit" agencies with legal aid contracts

<sup>14</sup> Routine Diversity Monitoring of the Supplier Base Legal Services Research Centre May 2011 (section 5: 2011 figures) - note that this data refers to "not for profit" agencies with legal aid contracts

**Questions:**

- **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?**

## An appropriate approach to regulation

28. The following paragraphs set out the approach to regulation that we expect licensing authorities to take in licensing and regulating special bodies/non-commercial bodies. In developing this approach, we have taken into account that special bodies/non-commercial bodies operate in a sector that is changing rapidly, in particular because of changes to funding. It is therefore particularly important that regulation of the sector is flexible and accommodates rapid change, rather than acting as a barrier to it.

## Outcomes for consumers

29. In our guidance<sup>15</sup> on the contents of licensing rules for ABS, we set out the expectation that regulation of ABS should be based primarily on clear outcomes supplemented by guidance, with rules where there is only one appropriate way to ensure consumer protection and broader public interest. We also set out a series of defining outcomes by which licensing authorities should develop their licensing rules. These can be found at **Annex B** to this paper.
30. We have reviewed these outcomes and consider that the key principles should be consistent across all types of ABS, including special bodies/non-commercial bodies. Our guidance on the treatment of special bodies/non-commercial bodies will reiterate the importance of an outcomes-focused approach and highlight those areas where the risks or very nature of special bodies/non-commercial bodies require a different approach.
31. It will be for the licensing authorities, be they new or existing, to put this into practice. For existing licensing authorities, this is an opportunity to take a truly outcomes-focused approach and take account of protections provided by the existing framework (for example membership requirements of bodies such as Citizens Advice). This will mean that existing licensing authorities will need to review the suitability of their existing regulatory arrangements for the regulation of special bodies/non-commercial bodies and, where necessary, amend them.
32. For new licensing authorities (whether they are existing approved regulators or new entrants) there is an opportunity to provide a sector-specific approach that combines best regulatory practice with a targeted and proportionate framework for non-commercial entities.
33. In considering any rule changes to enable licensing authorities to accept modification application requests from special bodies/non-commercial bodies, we will need to be satisfied that the licensing authority is competent to deliver the proposed regulatory arrangements. In practice this means that licensing authorities understand the risks posed by these types of providers and that the rules, supervision approach and enforcement (where needed) are targeted to

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<sup>15</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/abs\\_guidance\\_on\\_licensing\\_rules\\_guidance.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf)

these risks. We will also take into account the appropriateness of the licensing rules. We have identified some issues in paragraph 49.

### **Removal of unnecessary regulatory restrictions**

34. We have identified two key areas where regulatory rules currently prevent special bodies/non-commercial organisations from changing the way they operate to enable them to adapt to reductions in funding from, for example, legal aid cuts or a reduction in local authority funding.
35. We consider that the initiatives that special bodies/non-commercial organisations are considering have the potential to improve access to justice and are beneficial to the interests of consumers. Therefore we do not consider that it is appropriate for the current blanket restrictions to continue. If regulators identify risks to consumers from particular business models operated by special bodies/non-commercial organisations then they can consider on a case by case basis what a proportionate regulatory requirement would be. The principle should be to impose case by case only where needed, rather than to put the onus on the special body to invest time and effort better devoted to serving clients to make the case for a waiver.
36. For the avoidance of doubt, we consider that these restrictions should be removed now, in advance of any decision on ending the transitional protection.

### ***Restrictions on charging for advice***

37. Many special bodies/non-commercial organisations are facing severe funding crises. They are therefore starting to consider whether it would be appropriate for them to charge consumers who can afford to pay something towards the cost of their legal advice.
38. In some cases restrictions on such activities are imposed by the bodies themselves or their umbrella organisations and it is for them to consider whether they want to remove them. However, there are also regulatory restrictions that prohibit charging. For example, the SRA does not allow solicitors in special bodies/non-commercial organisations to charge for advice. This appears to be an historic restriction rather than a requirement based on mitigating risks to consumers and we cannot see any justification for a one size fits all ban on charging. Nor do we consider that it would be best regulatory practice to remedy the problem with a blanket waiver, since if a waiver applies to everyone the original rule is not needed. We therefore expect any regulator to allow charging by special bodies/non-commercial organisations and to impose restrictions on their ability to do so only when there is evidence that they are necessary to prevent harm to consumers in the specific circumstances of that body.

### **Restrictions on business structures**

39. Similarly, given the funding crises, some special bodies/non-commercial organisations are considering whether to expand the services they offer and provide some of the types of advice normally provided by traditional law firms, thereby being able to offer legal services to much wider range of consumers and provide additional funding sources. It is possible that, for perfectly legitimate reasons, they will want to provide these activities through separate trading arms.
40. There are currently regulatory restrictions that are likely to prevent these innovative approaches to improving the sustainability of this sector. Historically these have been seen as the only way to prevent firms avoiding regulation of non-reserved legal activities. One example is the SRA's separate business rule which, amongst other things, prohibits a body being connected with or having a significant interest in businesses that provide services such as immigration work, instructing Counsel or writing wills. As with the prohibition on charging, we cannot see any justification for a one size fits all ban on business structures or that it is appropriate to deal with these on a waiver basis since that imposes costs on the body concerned. We therefore expect any regulator to allow a full range of business structures for special bodies/non-commercial organisations and to impose restrictions only when there is evidence that they are necessary to prevent harm to consumers in the specific circumstances of that body.

#### **Questions:**

- **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?**

### **Activity Based Regulation**

41. Given the importance of proportionality and the potential impact of an overly burdensome regime on access to justice, we expect LAs to take an activity based approach whereby special bodies/non-commercial bodies would be licensed for the particular legal activities they provide, set out in conditions on the licence. For the avoidance of doubt, this does not mean that everything that the body does must be regulated.
42. An activity based approach would enable the regulatory requirements to be proportionate and targeted at real risks arising from the particular types of work as opposed to a one size fits all approach. For example, client money handling rules or professional indemnity insurance requirements may be significantly reduced or even totally unnecessary depending on the precise range of services offered. So a Law Centre that wanted to provide more commercial, and higher



risk, advice such as will writing (for which they would charge) in addition to reserved legal activities would almost certainly be subject to the same requirements for indemnity insurance as a commercial provider carrying out similar work. However, a Law Centre that restricted its activity to general welfare law (including the reserved legal activities of advocacy and litigation) would probably not require as high a level of insurance. Similarly, requirements for training would be targeted on the activities carried out. Bodies that do not hold client money may not be subject to the same accounts rules as those that do (for example if they receive a personal injury award for a client) and may not have to contribute to compensation arrangements at all.

43. We do not consider that it will be possible or necessary for licensing authorities to provide precise definitions of the types of activity that they are authorising the special body to undertake (other than those for reserved legal activities defined in the LSA). Instead they should be able to take an outcomes focused approach using their knowledge of the activity being regulated to set out what the body can do. So a licensing authority might authorise a Law Centre to conduct litigation and advocacy (as defined in the LSA), but confine that authorisation to employment advice and welfare benefits advice. It would not be necessary for the licensing authority to define “employment advice” or “welfare benefits advice”. The licensing authority should rely on the judgement of those managing the Law Centre to ensure that its employees and volunteers understand what activities they can undertake and to be able to explain to the licensing authority how it trains them to identify unsuitable cases. So, in the above example, it should be clear to everyone that an employee giving advice on landlord and tenant law was not authorised to do so. If areas of uncertainty arise it will be for the licensing authority to use its judgment about what action to take and to explain fully why it has reached its view.
44. Once a special body/non-commercial body is licensed, consumers using its licensed services will have a right to complain to the Legal Ombudsman if they are dissatisfied with the service they receive.

## Group licensing

45. It has been suggested to us that one approach to the regulation of special bodies/non-commercial bodies could be a group licensing regime akin to the Office of Fair Trading (OFT) scheme for consumer credit.<sup>16</sup> The OFT is able to issue a group licence where doing so would serve the public interest and has indicated in its guidance that organisations undertaking credit activities on a non-profit basis are likely to be lower risk and therefore suitable for such an approach.<sup>17</sup>

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<sup>16</sup> Set out in the 1974 Consumer Credit Act

<sup>17</sup> The OFT also considers the primacy of credit activities as a risk indicator, see OFT Guidance for consumer credit group licence holders (updated August 2011) [http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/credit\\_licences/OFT990rev.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/credit_licences/OFT990rev.pdf)

46. As discussed earlier in this paper, our starting point for this work has been to look at the extent to which these organisations are regulated already and identify gaps with reference to risks posed to consumers. While a policy case could certainly be made that a group licensing regime could provide a proportionate approach to the regulation of special bodies/non-commercial bodies, we do not consider that the case made for consumer credit (i.e. that the absence of a profit motive reduces risk), necessarily applies to legal advice because there are significant risks around competence and quality both in terms of advice provision and governance. A group licensing regime may not necessarily address all of these risks and could have the added effect of placing a significant compliance burden on the lead body which in reality would be taking on the role of regulator. Furthermore, where the lead body has a significant representative function this may also have implications for regulatory independence.
47. In addition to these policy considerations, there are legal difficulties with such an approach. While the LSA does not explicitly prohibit group licences, its drafting does not facilitate them in the same way that as the consumer credit legislation. We consider that there is a clear expectation in the LSA that each body providing reserved legal activities must have its own licence to continue to conduct these activities.
48. Having considered these issues we therefore do not consider group licensing to be the right approach. We have also considered whether it would be possible for an umbrella organisation to apply to a licensing authority for modifications to be made to its licensing rules for all members of the organisation when they applied for a licence. However, again the drafting of the LSA does not fit easily with such an approach since it refers to rules applying “in relation to the body”<sup>18</sup> that has applied for a licence. That is not to say that umbrella organisations and their requirements are irrelevant in regulatory terms. We consider that a licensing authority must take account of existing requirements for structures and processes (such as insurance, case management systems or audit), many of which may be provided through a national umbrella body, in their approach to requests to amend licensing rules, risk assessment and supervision. This is consistent with their current approaches that take into consideration, for example, whether a firm uses Lexcel or BSI standards. It is also consistent with the LSA requirement to avoid regulatory conflicts, for example the requirement, as far as reasonably practical and appropriate, “to prevent unnecessary duplication of regulatory provisions made by an external regulatory body”.<sup>19</sup>

## Question

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

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<sup>18</sup> Section 106(2) and (3)

<sup>19</sup> Section 54(1)(c)

## Contents of licensing rules

49. We consider that the following are areas where licensing rules may need to be adapted to ensure that they are targeted and proportionate for special bodies/non-commercial bodies:

- **Insurance arrangements** – Professional indemnity insurance provides insurance cover for claims of negligence. Depending on the activities that the body is carrying out, it may need a lower minimum level of cover than a commercial ABS or traditional law firm.
- **Compensation arrangements** – These can provide compensation in the event that a consumer has been the victim of fraud. Depending on the activities that the body is carrying out, it may not be necessary for it to contribute to compensation arrangements.
- **Accounts rules** – These normally concern the arrangements for holding client money (for example an award from a tribunal) and keeping it separate from the body's own money. If the body does not hold any client money it is unlikely to be proportionate to require it to go to the expense of setting up a separate bank account. This approach is consistent with authorisation based on the activity that a body is carrying out. We would also expect licensing authorities to take into account the requirements of funding bodies when deciding what accounts rules are appropriate.
- **Conflict of interests** – These concern how potential conflicts are identified and managed. For special bodies/non-commercial bodies, it may be necessary to include guidance about conflicts concerning members of its governing body and/or dealing with cases against a local authority when the local authority contributes to the body's funding.
- **Appeals** – The LSB has published guidance on the types of decisions that should have a right of appeal. We consider that it is important that decisions concerning restrictions on trade or livelihood can be appealed to an independent body. For special bodies/non-commercial bodies, we consider that it is particularly important that they are not deterred from appealing because of uncertainty about whether they will have to pay the licensing authority's costs. Our view is, therefore, that the appellate body for appeals that affect special bodies/non-commercial bodies should be the First Tier Tribunal of the General Regulatory Chamber.
- **Schedule 13** – This schedule to the LSA sets very detailed definitions of and requirements on the owners of ABS. It is possible that much of the schedule will not be applicable to special bodies/non-commercial bodies given the types of governance structures they often have and the fact that there is no "owner" as such. Nevertheless, we consider that licensing

authorities must be able to carry out checks on those who are able to influence the way in which the body is run and to refuse to license the body if they consider that some or all of those people are not fit and proper. We would also consider it necessary for the licensing authority to be able to require the body to remove people whom it no longer considered to be fit and proper. That would be equivalent to its powers to divest shareholders of commercial organisations.

- **Requirement for HoLP/HoFA** – All ABS must have a Head of Legal Practice who must be a person who is authorised to carry out at least one of the reserved legal activities that the body carries out. Although the HoLP will play a key role in ensuring compliance with licence conditions, as with commercial ABS, it is essential that the senior managers and governing body play key roles in ensuring that the body meets all its regulatory requirements. The Head of Finance and Administration’s role is to ensure compliance with accounts rules. It seems appropriate that there should be a requirement for the body to have HoLP, but, depending on the accounts rules that apply to the body, there may not be any need for a HoFA.
- **Training requirements** – If the licensing authority’s rules include training requirements, these must be based on the activities that the special body will carry out.
- **Consistency with the LSA requirements for employers and employees<sup>20</sup>** - This section of the LSA sets out the circumstances in which a body will be carrying out a reserved legal activity and will therefore need to be licensed. We consider that the licensing authority’s rules must not introduce unnecessary regulatory burdens on individuals or the entities in which they work and must not impose requirements over and above those in the LSA.

## Questions

- **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?**

## Modification Process

50. When a special body makes a licence application it can include a request that specifies which licensing rules it wants the licensing authority to consider modifying. The licensing authority will consider the request and decide whether to grant an order to modify its licensing rules in the way requested by the

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<sup>20</sup> LSA section 15

applicant or in another way that it considers appropriate. If the licensing authority refuses to change its rules or decides to make a modification that the applicant does not want then we consider that the applicant must be able to appeal through an internal review process and then to the appellate body.

### **The licence application process**

51. When a special body applies for a licence it can ask the licensing authority to modify some of its licensing rules. The licensing authority does this by making an order;<sup>21</sup> licensing rules cannot be applied differently to special bodies/non-commercial bodies unless such an order has been made.<sup>22</sup> The LSA does not permit two sets of licensing rules but states that licensing authorities must take into account the following issues in deciding whether to modify its rules and make an order:

- the reserved and non-reserved legal activities that the organisation proposes to do;
- the type of people to whom legal services will be provided;
- non-authorised people who have an interest in, or are managers of, the organisation; and
- any other matters in the licensing authority's rules.

52. The LSA<sup>23</sup> sets out what a licensing authority cannot change for special bodies/non-commercial bodies:

- determination and review of applications for a licence;
- the process for making applications for an order;
- people who are disqualified;
- that licensing rules cannot require all managers to be authorised persons in relation to an activity;
- carrying on of licensed activities can only be done by an authorised person;
- grounds for suspending and revoking licences;
- procedure for suspending or revoking licence; and
- review of decision to suspend or revoke licence.

53. Additionally, licensing rules must, even if they are modified, always contain<sup>24</sup>:

- the requirements set out in section 83(5) of the LSA (for example qualification regulations, indemnification arrangements, compensation arrangements, etc);
- rules about the manner and form for making applications;

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<sup>21</sup> LSA section 106(3)

<sup>22</sup> LSA section 83(9)

<sup>23</sup> LSA section 106(7)

<sup>24</sup> LSA section 106(8)

- that the licence ceases if the organisation becomes licensed by a different licensing authority;
- how licences can be modified; and
- accounts rules.

54. Licensing authorities will therefore have to provide guidance in their licensing rules about how they will consider applications from special bodies/non-commercial bodies for modifications. Any changes to licensing rules will have to be considered by the LSB before they have effect. We do not consider that it will be appropriate for licensing authorities to use a waiver approach to requests for modifications. That is likely to lead to a large number of slightly different approaches, with lack of clarity for consumers and the potential for enforcement action to be complex. Instead, we expect licensing authorities to set out broad parameters for their approach that will enable a fairly consistent approach, without fettering their discretion in individual cases.

### **Trade Unions**

55. Trade Unions provide mainly services to their members and will not require a licence to continue to do so. Section 15 of the LSA provides specific exemption for the provision of “excepted membership services” - the provision of some specified legal services by independent trade unions to their members. So even if the transitional protection is lifted, independent trade unions will not require a licence if they wish to provide services only to their members.

### **Low Risk Bodies**

56. Low Risk Bodies are defined the LSA<sup>25</sup> as commercial bodies with at least 90% lawyer ownership. Low risk bodies may also seek special treatment but they are different from the other categories of special body because, as commercial bodies, they are not covered by the transitional protection.<sup>26</sup> In practice these are likely to be traditional firms with a small amount of external ownership, which in theory could apply for special treatment from the licensing authority.

57. While we do not anticipate any circumstances where a licensing authority would alter its requirements for these bodies, we consider that decisions about alterations of licensing rules for low risk bodies need to be risk based but it seems unlikely that it would be appropriate to lower or alter the standards required in the licensing rules.

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<sup>25</sup> LSA section 108

<sup>26</sup> This is because they are not contained in the definition in section 23 of the LSA

## How to respond

58. Views on our proposals are welcome by 5pm on 16 July 2012 – this provides 12 weeks for interested parties to respond.
59. In framing this paper we have posed specific questions to help inform our final decision. These questions can be found in the body of this consultation paper and also as a consolidated list at **Annex C**. We would be grateful if you would reply to these questions, as well as commenting more generally on the issues raised (where relevant). Where possible please can you link your comments to specific questions or parts of the paper rather than making general statements.
60. We would prefer to receive responses electronically (in Microsoft Word or pdf format), but hard copy responses by post or fax are also welcome.

Responses should be sent to:

Email: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

Post: Mahtab Grant,  
Legal Services Board  
7th Floor, Victoria House  
Southampton Row  
London WC1B 4AD

Fax: 020 7271 0051

61. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.
62. We are also keen to engage in other ways and we would welcome contact with stakeholders during the consultation period. **If you do not have time to send a written response, we would be very happy to come and talk to you about your views. Please contact us on 020 7271 0050 if you would like us to do that.**

## Complaints

63. Complaints or queries about this process should be directed to Julie Myers Consultation Co-ordinator, at the following address:

Julie Myers  
Legal Services Board  
7<sup>th</sup> Floor  
Victoria House  
Southampton Row  
London WC1B 4AD

Or by e-mail to: [julie.myers@legalservicesboard.org.uk](mailto:julie.myers@legalservicesboard.org.uk)



## Glossary of Terms

<b>ABS</b>	Alternative Business Structures. From October 2011 non-legal firms will be able to offer legal services to their customers in a way that is integrated with their existing services. Or law firms will be able to develop their portfolios to compete across wider areas.
<b>AR or approved regulator</b>	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4 to the LSA, and whose regulatory arrangements are approved for the purposes of the LSA. The AR may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
<b>Authorised Person</b>	A person authorised to carry out a reserved legal activity
<b>BME</b>	Black, Minority and Ethnic
<b>Consultation</b>	The process of collecting feedback and opinion on a policy proposal
<b>Consumer Panel</b>	The panel of persons established and maintained by the Board in accordance with Section 8 of the LSA to provide independent advice to the Legal Services Board about the interests of users of legal services
<b>FSA</b>	Financial Services Authority – the regulator of all providers of Financial Services in the UK
<b>Impact Assessment</b>	An assessment of the likely impact of a policy on cost, benefits, risks and the likely or actual effect on people in respect to diversity
<b>LA or Licensing Authority</b>	An AR which is designated as a licensing authority to license firms as ABS
<b>Lay Person</b>	A person that is not an expert in a specified field. In the context of the LSB, the LSA specifies that the Chairman and the majority of members of the Board must be lay people.
<b>LSB or the Board</b>	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
<b>LeO</b>	Legal Ombudsman - The single organisation for all consumer legal complaints
<b>Levy</b>	The LSB is required by the Legal Services Act (2007) to meet all its, and the OLC's costs through a levy on the Approved Regulators.
<b>LSA or the Act</b>	Legal Services Act 2007
<b>MoU</b>	Memorandum of Understanding - A document describing an agreement between parties
<b>OFT</b>	Office of Fair Trading. A non-ministerial government department of the United Kingdom, which enforces both consumer protection and competition law.
<b>OLC</b>	Office for Legal Complaints. NPDB established by the Legal Services Act to establish an independent Legal Ombudsman Service (see LeO)

<b>Principles of Better Regulation</b>	The five principles of better regulation: proportionate, accountable, consistent, transparent and targeted
<b>Regulatory Objectives</b>	<p>There are eight regulatory objectives for the LSB that are set out in the LSA:</p> <ul style="list-style-type: none"> <li>• protecting and promoting the public interest</li> <li>• supporting the constitutional principle of the rule of law</li> <li>• improving access to justice</li> <li>• protecting and promoting the interests of consumers</li> <li>• promoting competition in the provision of legal services</li> <li>• encouraging an independent, strong, diverse and effective legal profession</li> <li>• increasing public understanding of the citizen's legal rights and duties</li> <li>• promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; acting in the best interests of the client; duty to the court; and maintaining client confidentiality.</li> </ul>
<b>Reserved Legal Activity</b>	<p>These are defined in the LSA as:</p> <ul style="list-style-type: none"> <li>• the exercise of a right of audience</li> <li>• the conduct of litigation</li> <li>• reserved instrument activities</li> <li>• probate activities</li> <li>• notarial activities</li> <li>• the administration of oaths</li> </ul>
<b>SDT</b>	Solicitors Disciplinary Tribunal. Adjudicates on alleged breaches of rules or the Code by solicitors
<b>SRA</b>	Solicitors Regulation Authority - independent regulatory body of the Law Society
<b>Statutory Instrument</b>	A form of legislation which allows the provisions of an Act of Parliament to be brought into force or altered without Parliament having to pass a new Act.

## Annex A – Summary of existing requirements (initial analysis)

	General	Complaints	Insurance	Client money (or accounting requirements if not applicable)	Compensation Fund	Quality	Governance	Disciplinary and intervention powers
SRA	Solicitors employed in non-commercial advice organisations are treated as in-house solicitors under the SRA regulatory framework <sup>27</sup> , and are subject to the same Principles and general professional requirements as private	The Principles in the SRA Handbook and relevant outcomes in the Code of Conduct apply to in-house solicitors. Additional requirements apply where services are permitted to be provided to someone other than the employer – this includes signposting to LeO  LeO Scheme Rules allow complaints about “an act or omission	Solicitors employed in non-commercial advice services must have “ <i>reasonably equivalent</i> ” <sup>28</sup> PII cover to what is required by the SRA Indemnity Insurance Rules (min PII levels are set out in the Qualifying Insurers Agreement Minimum Terms and Conditions)	If ‘in-house solicitors’ (including those working in non-commercial organisations) hold or receive client money then the SRA Accounts Rules apply	The object of the Compensation Fund is to replace money which a “defaulting practitioner” has misappropriated or otherwise failed to account for.  An in-house solicitor can be a “defaulting practitioner”.	In-house solicitors are subject to the SRA Principles, including having to provide a proper standard of service.  Usual CPD requirements apply to in-house solicitors  Some management duties in Chapter 7 of	Solicitors are not permitted to advise the public as employees of a non-commercial advice service unless (i) no funding agent has majority representation on the body responsible for the management of the service; and (ii) that body remains independent of central and local government.  At least one solicitor in a law	Powers relate to individual solicitors as the entities themselves are not regulated

<sup>27</sup> SRA Handbook: Rule 4 of Practice Framework Rules deals with in-house practice – see Rule 4.16 for “Law Centres, charities and other non-commercial advice services” which permits employed solicitors to give advice and act for members of the public subject to certain safeguards, including: (a) independence of the management Board (i.e. independent from local or central govt; and no funder to have majority representation on the management board), (b) no fees charged (except public funding and conditional fee type arrangements), (c) all fees/costs used to further provision of the organisation’s services, (d) a Law Centre can only call itself such if it’s a member of LCF; and (e) “reasonably equivalent” PII cover.

<sup>28</sup> SRA Practice Framework Rules 2011, Rule 4.16(e)

	practice lawyers. They are subject to additional restrictions when advising the public.	by someone who was an authorised person at the time” (rule 2.6). An act or omission of an employee is usually treated as an act/omission of an employer	Guidance note in Practice Framework Rules says that solicitors working as volunteers for advice agencies/Law Centres must have PII		Grants can be made out of the Fund where:  1. There is loss because of the dishonesty of a defaulting practitioner, or  2. There is loss and hardship due to failure to account for money a defaulting practitioner has received.	the Code ( <i>management of your business</i> ) apply to in-house practice, and certain supervision responsibilities apply to those with management roles - including having a system for supervising clients’ matters and for checking the quality of work. See also Outcomes 1.4 (resources, skill etc) and 1.5 (competent service)	centre, and one in an advice centre doing publicly funded work or doing or supervising litigation, must be “qualified to supervise” (rule 12 in Practice Framework Rules 2011). Individual must complete 12 hrs of management training (not necessarily CPD accredited) and have been entitled to practise as a lawyer for 36 months within the past 10 years.	
BSB	Part V of the Code of Conduct (Employed Barristers) covers Barristers employed by those other than	As with solicitors, LeO scheme rules apply to authorised persons. BSB FTC requirements apply only to self-employed barristers (see 403.5(d) and	Practising barristers (incl. employed barristers) must be covered by insurance against claims for professional negligence (to a level	An employed barrister must not receive or handle client money, securities or other assets other than by receiving payment of remuneration or	No compensation fund (barristers working in SRA regulated entities will be covered by the SRA’s	Usual CPD requirements apply. Employed barristers conducting litigation must comply with the Employed Barristers	No specific requirements	Usual provisions apply

	<p>Recognised Bodies.<sup>29</sup> Permits barristers employed by Legal Advice Centres to provide services to the public.</p> <p>Employed barristers generally are permitted to conduct litigation provided that they comply with the Employed Barristers Conduct of Litigation Rules (Bar Code of Conduct rule 504 and Annex</p>	<p>Annex S Complaints Handling which details FTC requirements)</p>	<p>specified by the Bar Council)<sup>30</sup>. Self employed barristers are required to join the Bar Mutual Indemnity Fund (BMIF) <u>but BMIF is not open to employed barristers</u></p> <p>Responsibility for PII cover therefore rests with the organisation</p>	<p>where the money or other asset belongs to his employer (Rule 505 Bar Code of Conduct)</p> <p>Under rule 506 an employed barrister who is a manager of an authorised body is permitted to handle client money.</p>	<p>fund)</p>	<p>Conduct of Litigation Rules (Annex I of the Code of Conduct) (see rule 1 in particular for the qualified person requirement)</p>		
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<sup>29</sup> Bar Code of Conduct Rule 502: An employed barrister may supply legal services only to the persons referred to in paragraph 501 and must not supply legal services to any other person save that whilst acting in the course of his employment: (b) a barrister employed by or at a Legal Advice Centre may supply legal services to clients of the Legal Advice Centre; (c) any employed barrister may supply legal services to members of the public free of charge (to any person).

<sup>30</sup> Rule 204 Bar Code of Conduct

	<p>l)</p> <p>According to Rule 807 - Barristers employed by Legal Advice Centres are prevented from receiving any fee or reward for providing services other than a salary (to be paid for by the Legal Advice Centre) and they must not have any financial interest in the Centre.</p>							
Citizens Advice Bureau	Members required to comply with Membership Agreement and supporting Membership Standards	4 stage complaints process – bureau CEO, Bureau Chair, review by Citizens Advice Chief Executive and then an Independent Adjudicator	Full Professional Indemnity cover plus other block insurances including public liability provided through Citizens Advice	No specific client money requirements other than ‘sound financial management and accountability” requirements in membership agreement . This	TBC (as all solicitors are employed our understand is that this is not required)	All CABx are required to work to common standards and meet the terms of the Membership Agreement – e.g. type of	Each CABx is required to be a registered charity and incorporated) .  Citizens Advice itself is also a registered charity, as well as being	Citizens Advice have the power to take action against breaches of the membership agreement (under the

				is echoed in the membership standards. But no client money is handled		<p>service, quality of service provision, se management system, governance and management, quality requirements etc. Audit and quality of advice assessment carried out by accredited and trained auditors and Citizens Advice accredited to recommend passport to LSC General Help level (with or without casework).</p> <p>Requirement to have a 'Chief Officer'</p> <p>Citizens Advice audit bureaux against the standards every three years.</p>	the membership organisation for bureaux. Citizens Advice is therefore subject to governance requirements etc.	terms of the agreement itself) and where standards not met. Failure to meet standards automatically puts bureau into formal membership disciplinary process by a sub-committee of Citizens Advice Trustee Board. This can lead to directions, including services put under alternative management and termination of membership (
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Law Centres Federation	Members pay an Annual Subscription which is banded according to turnover	Law Centres are required to have in place a Complaints Procedure as part of the Specialist Help QualityMark Standard. As solicitor agencies reference is made to the Complaints Procedure in Client Care letters and includes details of complaints to the Legal Services Ombudsman.	As solicitor agencies Law Centres are required to follow the recommendations for In House lawyers. The Law Centres Federation recommends a minimum of £2 million as recommended by the Law Society.	For those Law Centres that hold client money the Code of Conduct rules issued by the SRA are followed.  Accounting policy is as applied to both Company and Charity law (Charities are required to follow the Statement of Recommended Practice (SORP) by the Charity Commission).	Law Centres are not required to contribute to the Compensation Fund. Practising Certificates are classified as individual fees with no requirement for the compensation fund levy.	All Law Centres hold the Specialist Help QualityMark in addition the Law Centres Federation Membership Criteria requires a minimum of 2 solicitors be employed one of which must be at least 3 years qualified.	All Law Centres are Companies Limited by Guarantee and registered Charities. All have an elected Board of Directors whom is also Trustees of the Charity. Day to day governance is overseen by the Board with delegation to staff usually a Director, Senior Solicitor or manager.	The Law Centres Federation can expel Law Centres for misconduct or breach of membership. The Law Centres Federation owns the name Law Centre which is trademarked and can withdraw use of the name if it is deemed necessary.
Charity Commission	The Commission is the independent regulator and registrar for charities in England and Wales. Its five	All complaints made to the Commission are looked at to establish what action is required and whether the Commission is the appropriate regulator to take up the issue.	Professional Indemnity Insurance is not mandatory for charities.  <i>Charity Commission guidance says:</i>	n/a  Registered charities must prepare annual accounts and submit annual returns to the Commission. Accounting and annual return	No compensation fund. The Commission is not liable for the actions of charities which it regulates; those charities are	The Commission's remit is focused upon trustee responsibilities rather than the services being provided by charities therefore	Unincorporated associations and trust are the most commonly used legal forms for registered charities. Less than 20% of registered charities are companies;	Charity Commission has wide powers to intervene in a charity when things go seriously wrong.  Temporary



	<p>statutory objectives include promoting compliance with charity law and increasing public trust and confidence in charities.</p> <p>Charities operate for exclusively charitable purposes for the public benefit. There are 162,000 registered charities; a few of these provide legal advice services (including approx. 400 citizens advice bureaux and 60 law centres registered as charities).</p>	<p>Generally, complaints will be taken up where:</p> <ul style="list-style-type: none"> <li>• there is serious risk of significant harm or abuse of the charity; its assets; beneficiaries or reputation; and</li> <li>• Intervention is a necessary and proportionate response to protect them</li> </ul> <p>For more information see <a href="#">guidance</a> on complaints about charities</p>	<p><i>“Where a charity is providing, whether contractually for a fee or otherwise, a professional service (such as counselling) or any form of advice or information (especially where complex or potentially contentious), the charity may be liable if this is provided negligently. The charity should consider insurance against claims that the charity is legally liable for loss, injury or damage sustained when that service was provided or as a result of following that advice or using that information.”</i></p>	<p>requirements increase relative to income.</p> <p><a href="#">A quick guide to the accounting framework</a></p> <p><a href="#">A quick guide to charity annual returns</a></p>	<p>independent of the Commission and of government</p>	<p>service quality is not a regulatory issue for the Commission.</p> <p>The Commission endorses certain quality standards operated by some groups of charities.</p> <p>The Commission has Memoranda of Understanding in place with other regulators with whom they share regulatory interests and liaises with other regulators including the CIC regulator</p>	<p>companies are subject to additional regulatory requirements under company law. Incorporated forms (e.g. company) are recommended for larger charities and also those that may face particular liability issues, for example in relation to employment of staff, contracts or professional services.</p> <p>Trustees cannot be paid or otherwise benefit from the charity without permission from the charity’s governing document or the Charity Commission.</p>	<p>protective powers include powers to freeze bank accounts and suspend trustees or staff.</p> <p>Remedial powers include powers to remove trustees or staff, appoint new trustees or make a scheme for the administration of the charity.</p>
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	Regulatory activity includes giving advice and guidance in accordance with the Charities Act. See the Commission's <a href="#">Risk Framework</a> for further information.							
CIC Regulator	Regulation is intended to be light touch. Community interest companies have to deliver continued benefit to the community and file the same documents as ordinary companies i.e. annual returns and accounts,	Regulator is able to investigate complaints from stakeholders	No specific professional indemnity insurance requirements	No specific requirements	No specific requirements	Not focused on the activities being provided	Usual company requirements e.g. one director responsible for financial/statutory records, articles of association etc. Directors can be paid.	The Regulator has powers to act if certain default conditions are not met such as, not acting in the interests of the community or failing to observe the asset lock. These powers are wide ranging and include being able to

	<p>They are also required to file an annual CIC report that is placed on the public record at Companies House</p>							<p>appoint or remove a directors and presenting a petition to the courts to wind up the CIC.</p> <p>The Regulator also has the power to appoint external auditors.</p> <p>The Regulator will attempt to resolve any issues informally before using its enforcement powers. These powers are provided by the Companies (Audit, Investigations and Community Enterprise) Act 2004.</p>
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<p>Legal Services Commission</p>	<p>Contractual requirements and as part of tendering process.</p>	<p>Requirement to have in place a written complaints process and/or record/log of client complaints (before the start of the contract)</p> <p>Applicants must confirm that they have had no complaints about the applicant organisation or key personnel (that have been referred to and upheld and sanctions applied by an external regulatory/complaints body) in the past 3 years.</p> <p>Complaints requirements also feature in the relevant quality standard.</p>	<p>Requirement to have:</p> <ul style="list-style-type: none"> <li>Professional Indemnity Insurance at a level specified by the LSC</li> <li>Public and employers liability insurance (at required statutory level)</li> </ul> <p>Applicants must declare professional negligence claims from the past 3 years (in relation to the category of law being applied for)</p>	<p>Applicants must confirm they have no business conduct issues (financial solvency, SRA investigations, payment failure etc) and that they are not in breach of public contracts regulations (relating to bribery, fraud, money laundering etc)</p> <p>Financial disclosure provisions in the unified contract as well as requirement to maintain annual accounts</p> <p>Contracts can be terminated immediately if (among other reasons) clients are at risk of financial loss or to protect public funds</p>	<p>n/a</p>	<p>Applicants must hold a specified quality standard either an Specialist Quality Mark, Mediation Quality Mark (for Mediation contracts only) or LEXCEL)</p> <ul style="list-style-type: none"> <li>Accreditation on panel membership for certain categories of law outlined in category specific contract specifications.</li> <li>Quality Based Key Performance Indicators (KPI's)</li> </ul> <p>Essential criteria for tender:</p> <ul style="list-style-type: none"> <li>Ratio of</li> </ul>	<p>n/a</p>	<p>Providers required to disclose any regulatory / relevant professional bodies interventions they may be subject to.</p> <p>Sanctions in the 2010 contract also allow the LSC to:</p> <ul style="list-style-type: none"> <li>suspend payments</li> <li>prohibit any new work being taken on</li> <li>exclude individuals from being supervisors or doing certain work</li> </ul>
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						<p>supervisors to caseworkers</p> <ul style="list-style-type: none"> <li>• Must not have received a Peer Review rating of 4 or 5 in past 3 years (4= Below Competence, 5= Failure in Performance)</li> <li>• Meet requirements of the supervisor standard (this forms part of the contract 2010 contract but was part of the SQM for the unified contract).</li> </ul> <p>Contracts can be terminated immediately if needed to protect clients</p>		
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						from possible serious harm or protect client interests		
OISC		<p>OISC regulated advisers must have in place a written procedure for the handling of complaints, including a complaints log detailing the complaints received, resolution timescales and complaint outcomes. Client care letters must contain information on complaints processes. The statute states that Clients do not have to use the adviser's complaints scheme and are able to complain to OISC at any time (From OISC Code of Standards 48-51 <i>Organisational Standards</i>)</p>	<p>All advisers must have current and adequate professional indemnity insurance cover in respect of any civil liability that may be incurred in relation to their work and advice services. The OISC will not grant authorisation to practise to any adviser without PII (OISC Code of Standards 67-69 <i>Running the Organisation</i>)</p>	<p>Client money must be held in a separate account (with supporting documentation) and clients must be supplied with a financial statement if they request.</p> <p>Accounts must be audited and verified.</p> <p>OISC has the power to request accounts.</p> <p>(OISC Code of Standards 60-66 <i>Running the Organisation</i>)</p>	<p>OISC has no power to operate a compensation fund</p>	<p>Each applicant is tested and must satisfy OISC's competence standards. Regulated advisers must also comply annually with CPD requirements.</p> <p>There must be adequate management and oversight of staff, including a designated manager and supervisor (From OISC Code of Standards 56 <i>Running the Organisation</i>)</p>	<p>Must have in place management policies and structures. All policies and structures must be reviewed annually and be available for inspection. These policies and structures should include: decision making structure, statement of key objectives, financial control/management statement and job descriptions (From OISC Code of Standards 52-54 <i>Running the Organisation</i>)</p>	<p>OISC has the power to enter premises and investigate complaints regarding competence and fitness or a breach of the code of standards (only applies to regulated advisers</p> <p>The Commissioner has a number of sanctions that she can apply direct on finding a breach of regulations proved.</p> <p>The First-tier Tribunal (Immigration Services) can hear disciplinary</p>

								charges laid by the commissioner and impose sanctions including suspension and prohibition. The tribunal can also give instructions for the adviser to refund the client's fees or pay a penalty to the Commissioner.
Trade Union Certification Officer	The Certification Officer maintains a list of trade unions and employers' associations. Any trade union may apply to the Certification Officer to have its name included in the public	Complaints can be made to the Certification Officer where a trade union has breached the requirements of the Trade Union and Labour Relations (Consolidation) Act 1992 or certain union rules.  In general it is unlikely that allegations	No information found	Income/expenditure and other accounting information required in annual returns to Certification Officer. This information is all published in the CO's annual report.	No information found	No information found	No information found	The Certification Officer has powers to investigate complaints brought against Trade Unions (for example regarding a breach of TU rules or financial irregularity) and to issue

	<p>list (but there is no statutory requirement to be listed).</p> <p>Entry in the list means no more than that the body concerned satisfies the statutory definition of a trade union and has applied to be listed.</p> <p>Trade unions and employers' associations are required to send to the Certification Officer an annual return of their affairs which are made available to the public (via the CO website)</p>	<p>regarding failure to provide proper representation will be investigated by the Certification Officer (see FAQs on CO website)</p> <p>There is no ombudsman for Trade Unions</p> <p>According to the CO's Annual Report for 2010-11, 48 complaints were determined last year.</p>						<p>enforcement orders.</p>
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## **Annex B – ABS outcomes**

### ***Behavioural integrity***

1. Both lawyer and non-lawyer employees, office holders and owners behave in ways that ensure that:
  - justice and the rule of law are upheld;
  - they act with integrity and respect the professional principles;
  - they act with independence and in the best interests of their clients, ensuring that confidentiality and client money are protected;
  - they provide good standards of service to all their clients; and
  - they are trusted by members of the public and do not behave in a way that undermines trust in the provision of legal services.

### ***Regulation***

2. Regulation is focussed on consumer protection. LAs' enforcement powers are targeted on areas of high risk and consumer detriment, act as an effective deterrent and are able to be used proportionately in response to a wide variety of compliance and enforcement issues involving both individuals and entities to reduce the risk to consumers.
3. Consumers are confident that their advisors are regulated appropriately.
4. LAs' approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services.

### ***Ownership***

5. Consumer confidence in ABS that are owned by non-lawyers is at least as high as other law firms.
6. LAs identify and manage any risks to the outcomes posed by owners and their associates.

### ***HoLP/HoFA***

7. High quality Heads of Legal Practice (HoLPs) and Heads of Finance and Administration (HoFAs) who come from a wide range of backgrounds and diversity reflecting the commercial decisions and commercial operations of the ABS as well as the statutory requirements.

8. Strong governance arrangements to:
  - provide HoLP and HoFA with access to CEO, Board, non-executives, LA whenever necessary;
  - ensure compliance with LSA and licence requirements;
  - ensure appropriate operating procedures; and
  - provide a mechanism for ABS staff to raise concerns which are acted upon appropriately.
9. ABS compliance with licence requirements is high, with minimum enforcement required by LAs.

#### ***Indemnity and compensation***

10. Regulatory arrangements provide appropriate levels of redress and protection for consumers against negligence and fraud for the services being provided, comparable to those enjoyed by consumers of non-ABS firms, whilst not unduly restricting commercial activity.
11. Consumers are more informed about the risks and potential compensation for fraud and misconduct when obtaining legal advice from any legal service provider.

#### ***Reserved and non-reserved legal services***

12. Different forms of commercial arrangements for ABS emerge and effective regulation provides the same levels of consumer protection for reserved and unreserved legal activities as in the rest of the market.

#### ***Access to Justice***

13. ABS provide examples of innovative and flexible ways of providing a greater range of services and enhanced value for money for consumers.
14. Consumer awareness and understanding of their right to, and how to get, legal advice improves.
15. Consumer trust in the provision of legal services improves.
16. ABS provide examples of improving access to justice that can be used by ARs, LAs and the LSB as examples of good practice in improving access to justice in general.

### ***Appellate bodies***

17. One appellate body with sufficient resources and expertise to deal with complex issues whose processes and costs are transparent, efficient, fair and public.
18. The appellate body is able to draw from experience across a wide range of regulatory issues and is able to come to consistent decisions about similar issues.

### ***Complaints handling for ABS***

19. Consumers of legal services provided by ABS are afforded the same protections as consumers from non-ABS providers for first line complaints handling and access to the Legal Ombudsman.
20. Referral of complaints to other bodies is done in a way that minimises inconvenience for consumers.

### ***Diversity***

21. ABS allow the provision of legal services to develop in ways that help encourage diversity.
22. Better information on diversity allows consumers a clearer insight into the providers they choose, provides individuals the information needed to make an informed decision about their careers and allows law firms to differentiate themselves in a liberalising market.

### ***Transitional arrangements for LDPs and other similar bodies***

23. There is a smooth transition for firms that currently have non-lawyer managers or owners who wish to become ABS.

### ***Regulatory overlaps***

24. A single framework Memorandum of Understanding (“MoU”) is implemented by all relevant bodies and provides a mechanism to resolve overlaps in ways which:
  - provide the best form of consumer protection and redress;
  - minimise confusion for market participants; and
  - reduce/remove conflict in future.

## Annex C – List of questions

- 1) To what extent do you think the current non-LSA regulatory frameworks provide fully adequate protection for consumers?
- 2) Do you agree with the LSB's assessment of the gaps in the current frameworks?
- 3) What are the key risks to consumers seeking advice from non-commercial advice providers?
- 4) What are your views on the proposed timetable for ending the transitional protection?
- 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?
- 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?
- 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?
- 8) What are your views on our proposed approach to allowing a full range of business structures?
- 9) Do you agree with our analysis of group licensing?
- 10) What are your views on these issues that may require changes to licensing rules?
- 11) Are there any other areas where the LSB should give guidance to licensing authorities?