

To:	Legal Services Board	
Date of Meeting:	23 May 2013	Item: Paper (13) 32

Title:	Regulation of special bodies/non-commercial bodies	
Workstream(s):	Widening access to the legal services market	
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Status:	Unclassified	

Summary:

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 from the need to have an ABS licence. This 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. The LSB published a public consultation in April 2012 setting out the main issues that it needed to consider in deciding whether to recommend ending the transitional period and when. We received a good level of responses from a wide range of organisations. Our response to the points made in the consultation and our then emerging policy position on each of them was published in December 2012. .

In order to make progress on developing an appropriate regulatory framework for special bodies, we arranged two workshops for interested parties in April. These were relatively well attended and provided a good forum for discussion which has helped us to develop our draft guidance to licensing authorities (**Annex A**).

The Board may want to focus on the key points, summarised at paras 20-22 in the paper. These differ comparatively little in substance from the emerging policy positions set out in the December document, but move from statements of principle to more specific detail to inform both the development of rules and the wider regulatory practice of LAs in this area.

The Board should note that the slower timetable that the draft guidance sets out (where the transitional period does not end before January 2016, as opposed to our earlier thinking of 2015) reflects the scale of challenge faced by the SRA, its relatively slow progress to date and indeed depends almost entirely on it being able to conduct a significant amount of work in the intervening period; there are no other potential licensing authorities at the moment. Although the SRA has shifted its position on a number of issues and is contributing constructively to our discussions, it is by no means clear at this stage that it will have the necessary resources or the policy will to make the changes it needs to make to produce a targeted regime, rather than treating special bodies as another class of law firm, posing similar risks.

We have said publicly that the LSB will not make a recommendation to end the transitional period until it is confident that there is an appropriate regulatory framework in place. Although we could undoubtedly develop a proportionate regulatory framework ourselves, we do not consider that direct regulation of special bodies en masse would be an appropriate role for the LSB, even if the relevant sections of the LSA were commenced to make us a licensing authority. Our policy has always been that that role is one of “last resort” rather than as a regulator of, perhaps, up to 500 entities. It is therefore possible that developmental work on this project will be suspended later this year.

That would mean that a “transitional” period would have to be left in place, potentially indefinitely. While obviously far from ideal, we consider that to be preferable in policy terms and likely to be better received by third sector stakeholders than moving our thinking significantly, given the potential impact that the SRA’s current style of regulation would have on the sector.

Recommendation(s):

The Board is invited:

- (1) to note and comment on the draft guidance in Annex A
- (2) agree to delegate final sign off for publication to the Chairman and Chief Executive
- (3) to note and discuss the possible implications of a lack of progress in discussions with the SRA

Risks and mitigations

Financial: None

Legal: None

There is considerable political interest in the role of not for profit organisations and any perceived or actual increase in regulation of them is likely to come under scrutiny.

Reputational: Special bodies have emphasised the importance of certainty about when the transitional period will end so that they can make any necessary changes to their governance structures. Further delay (because there is no suitable licensing framework in place) may lead to criticism of the LSB.

Resource: None

Consultation	Yes	No	Who / why?
Board Members:		X	No significant new policy issues
Consumer Panel:	X	X	Steve Brooker and Harriet Gamper, via early drafts of the guidance and attendance at a

			workshop for representatives of special bodies, LAs, and other stakeholders
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	s22 – intended for future publication	None