



Regulation of special bodies/non-commercial bodies

TUC response to LSB Consultation

The Trades Union Congress (TUC) welcomes the opportunity to respond to the Legal Services Board consultation on the regulation of special bodies/non-commercial bodies that provide reserved legal activities.

The TUC has 54 affiliated unions representing 6 million members who work in a wide variety of sectors and occupations. TUC affiliates are committed to providing quality legal representation to their members.

Trade unions provide a wide range of legal services to union members and, in very limited circumstances, to the immediate family of members. These services principally involve advising and representing members in employment tribunal cases, personal injury claims and in claims relating to pension entitlements. Some unions also provide will-writing services, conveyancing, representation for members who are defendants in work-related criminal cases and representation in small claim court cases.

In recent years, unions have increasingly contracted out the provision of legal services to solicitors' firms. These firms are fully regulated by the Solicitors' Regulatory Authority (SRA). Some unions also employ in-house solicitors who provide legal services for members. These lawyers are subject to oversight by the SRA and the Bar Standards Board.

The reserved legal activities undertaken by in-house union lawyers fall within the scope of section 15(6)-(8) of the Legal Service Act 2007. Consequently, as the consultation document acknowledges, unions will not be required to be licensed after the transition period.

Section 15 (6)-(8) was included in the 2007 Act in the recognition of the fact that independent trade unions are distinctive from other legal service providers. The primary role of trade unions is to promote good industrial relations, to protect members' interests and to work for improved working conditions – not the provision of legal advice or services. Trade unions are membership organisations, which provide legal services to members rather than to the general public. Trade unions are also extensively regulated via the contract for membership and through legislation, notably the Trade Union and Labour Relations (Consolidation) Act 1992. Union legal services are provided in accordance with union rulebooks. The rulebook forms the basis of the contract of membership and is overseen by the Certification Officer. Trade unions also have strong governance and democratic structures, which provide additional safeguards for members. Unions are independently funded through member subscription fees and therefore are not subject to the same conflicts of interest issues as some other organisations.

Consumer protection

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?

TUC affiliates remain firmly committed to the maintenance of high quality legal services and representation for union members and their immediate family. Due to the distinctive nature of trade unions and the existing regulation (outlined above), section 15(6) of the LSA 2007 permits trade unions to provide reserved legal activities without the need to establish an ABS structure or to be licensed. In-house union lawyers also continue to be regulated by professional regulatory systems.

However, we recognise that there may not be sufficient safeguards in place for other special bodies and non-commercial bodies which undertake reserved legal activities. Additional regulation of some special bodies may be beneficial and would protect consumer interests.

The consultation document rightly acknowledges that in the current funding climate it is important that regulation does not place unnecessary burdens on voluntary sector organisations. Over-regulation may affect the viability of advice agencies and mean they are no longer able to provide advice and representation to vulnerable groups in society. This would limit access to justice for those on low incomes who need advice on housing, welfare and employment related issues. It is important therefore that future regulation is proportionate and targeted.

We believe that licensing authorities should ensure that the licensing process is straightforward, flexible and reflects the particular circumstances and level of risk associated with special bodies. We are concerned that the SRA currently estimates that the licensing procedure for ABSs could take between 6 to 9 months.

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

The TUC believes that the consultation document has identified the key risks to consumers who seek advice from non-commercial providers. For example, we agree that advice agencies undertaking reserved legal activities should be required to employ a qualified solicitor and that special bodies which are licensed should be required to have indemnity insurance. These measures will help to maintain the quality of the legal services and improve financial security for consumers.

The consultation document also rightly acknowledges that the LSA 2007 exempts trade unions when undertaking reserved legal activities for members and their immediate family from the requirement to be licensed. This exemption reflects the fact that trade unions are distinctive organisations and do not pose the same level of risks as some special bodies.

Ending the Transitional Period

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?

The TUC recognises that ending the transitional period in April 2013 may not be possible due to the amount of work which would have to be undertaken to create an appropriate regulatory framework. However, the TUC would not want to see the period extended indefinitely. In addition, the licensing authorities should be encouraged to publish and consult at an early stage on any proposed licensing requirements for special bodies and non-commercial organisations. Early consultation will help to ensure that proposed regulations will be effective and proportionate. Early publication would also enable advice agencies and law centres to develop structures and business models which will meet required standards in advance of the regulation coming into effect.

The TUC looks forward to participating in the future consultation on whether the definition of 'reserved legal activities' should be extended to include the provision of general legal advice. The TUC does not foresee that the outcomes of the review will affect the provision of union legal services. Under the terms of section 15(6)-(8) trade unions would continue to be able to provide general legal advice to members and their immediate family without being required to establish an ABS or to be licensed. This would include advice given to members by union workplace reps for the purposes of workplace grievance and disciplinary hearings, and in the context of collective bargaining.

Nevertheless we recognise that reclassifying the provision of general legal advice as a 'reserved legal activity' is likely to have significant implications for voluntary sector advice agencies. While the TUC fully endorses the principle that legal advice should be accurate and reliable, it is important that extended regulation does not undermine the ability of Citizens Advice Bureaux and other advice centres to support and advise those on low incomes.

An appropriate approach to regulation

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?

Do you agree with our analysis of group licensing?

The TUC agrees with the analysis of the restriction on charging of fees. Cuts to legal aid and reduced grant aid for advice services mean that many voluntary sector organisations are no longer able to provide legal advice and representation. This is having a detrimental impact on the ability of vulnerable groups, who cannot afford to pay for commercially provided services, to access justice. Permitting special bodies to charge for the services they provide could alleviate this situation. The TUC believes that any remaining restrictions on charging by special bodies / non-commercial organisations should be targeted and proportionate.

We agree that a full range of business structures should be available to special bodies and non-commercial organisations. This will provide flexibility reflecting differing circumstances. We also agree with the analysis set out in the consultation document on group licensing.

Content of licensing rules

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?

As stated above, the TUC believes that future regulation should be proportionate, and targeted, reflecting the nature of special bodies and non-commercial bodies. We agree that licensing authorities should take an activity based approach to regulation.

The consultation paper rightly acknowledges that as a result of section 15(6) of the LSA 2007 trade unions will not be required to be licensed to provide reserved legal activities to union members and their immediate family after the transition period.

We recognise that if unions should decide in the future to provide a wider range of legal services, with the effect that the section 15(6) exemption no longer

applies, they would be required to establish an ABS and to be licensed on similar conditions to other advice agencies.

However, it is also important to note that section 105 of the LSA 2007 exempts independent trade unions from the requirements relating to the Head of Legal Practice and Head of Finance. Similarly the ownership approval provisions in Schedule 13 do not apply to independent trade unions. These exemptions were included in the LSA 2007 in recognition of the specific constitutional requirements which apply to trade unions.