

Consultation response

**Shelter response to the Solicitors
Regulation Authority consultation:
Alternative Business Structures Fee
Structure**

April 2011

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About Shelter

Shelter is a national campaigning charity that provides advice, support and innovative services via our website, helplines and national network of services.

Shelter is a leading national provider of specialist social welfare law advice, and we help over 25,000 people each year under legal aid contracts. We employ over 200 advisers and 40 solicitors to give legal aid advice to the public.

Our services include:

- A national network of over 40 advice and support services
- Shelter's free housing advice helpline which runs from 8am–8pm (8am-5pm on Saturdays and Sundays)
- Shelter's website (shelter.org.uk/getadvice) which provides advice online
- The CLG-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, who are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in antisocial behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.

Summary

While we support the broad principles outlined in the consultation, we consider that the Solicitors Regulation Authority (SRA) needs to be mindful of the particular circumstances of special bodies and in particular their charitable and not for profit status in fixing the licensing fees. It should use its powers under the Legal Services Act to vary the licensing regime for special bodies in such a way as to set the licensing fee for those bodies at a level that is commensurate with their ability to pay and the degree of risk they present.

Introduction

Shelter is a charitable organisation that campaigns on housing-related issues and provides services to those in housing need. Our services include practical advice and support and legal advice.

Our legal advice work is funded partly through legal aid and partly through our charitable income. We employ over 200 advisers and 40 solicitors to give advice to the public in the field of social welfare law, primarily in housing, debt and welfare benefits.

We are, within the meaning of the Legal Services Act, a special body. As we employ solicitors, we will be required to be licensed as an Alternative Business Structure (ABS) before the ending of the grace period for special bodies in 2013.

This represents a considerable shift in our existing model of delivery of legal services. It is an anomaly that de-regulation of the legal services market will lead to increased regulation of the not for profit sector. We are keen to ensure that, while our clients receive the same degree of regulatory protection as all other consumers of legal services, the cost and burden of regulation is commensurate with the nature of the work we do, the regulatory risk it presents, and our financial position as a charity.

We are represented on the SRA's ABS Reference Group and while we broadly support the direction in which the SRA is moving, we do have concerns about the impact of increased regulation on ourselves and on the charitable advice sector generally.

Within the scope of this consultation, we consider that the SRA's proposals are broadly right and sensible. However there needs to be further consideration given to the needs of special bodies, including in the setting of the fee structure, and we trust that further consideration will be given during the grace period.

Consultation Questions

1) Do you agree with the overall approach, assumptions and principles outlined in paras 2 - 6?

Yes, with one addition.

We would suggest that the final principle in paragraph 6 should read "Take some account of ability to pay, in particular, in relation to small and new businesses and charitable / not for profit organisations - fees should not be a deterrent to new entrants or non-commercial organisations".

2) Do you think that the proposal to apply the existing fee structure to ABS might have a negative or positive effect on any particular group? If so, please give details.

We believe that consideration needs to be given to varying the fee structure, or providing a discounted fee, to charitable and not for profit organisations. We are not currently regulated and therefore only pay the individual fee for our employed solicitors. The reduction in the practising certificate fee last year was therefore very welcome.

Moving to become an ABS will significantly increase the regulation that we are subject to and is likely to require substantial changes in our structure and governance, as well as in our front-line service delivery. That in itself will carry significant additional cost. A substantial ABS licensing fee will increase the regulatory burden and in the case of many smaller advice agencies may make it uneconomic for them to continue providing services.

The SRA should use the powers under the Legal Services Act to vary the licensing regime for special bodies to allow for a reduced licensing fee reflecting the charitable non-commercial nature of the work we do. We believe that would be entirely commensurate with the regulatory objective of promoting access to justice. There is no justification for requiring a social welfare law charity, even a large charity such as ourselves, to pay the same fee as a commercial profit-making ABS such as a banking group or retail company.

We will continue to work with the SRA through the Reference Group and would be pleased to assist in developing a fee structure appropriate for special bodies.

3) Do you agree that the firm fee should be based on turnover? If you disagree, please specify what different basis should be used.

We agree, subject to our comments about special bodies, that turnover is an appropriate measure. However, it needs to be carefully defined. In our own case, for example, our legal services are partly funded by legal aid and other statutory / contract income, and partly by charitable donation. If Shelter uses some of its charitable donations to offer legal services, are those donations part of the turnover? They are part of the funding of those services, but are not income generated by it.

4) Do you agree that MDP ABS should not be charged on a different basis from other ABS? If not, please explain your view.

In our own case, we are in effect an MDP since as well as legal advice we also provide legal information, practical advice and support and engage in campaigning and policy work.

We agree that an approach based on the turnover of the legal part - the regulated part - of the MDP is appropriate. Some thought does need to be given to the precise definitions given to identify the boundaries between regulated and non-regulated work. S12 of the Act is to a degree circular in this respect, since it defines legal activity as "the provision of legal advice or assistance". Clearly our specialist legal advice is caught by this definition. But is generalist advice? The provision of legal information through our website or telephone helpline? Our specialist support to legal advisers in other organisations?

**5) Do you see any difficulties in relating turnover to "regulated activities"?
Please give details**

Please see our answer to question 4

6) Do you agree with the underlying principles set out in paragraph 31?

Yes

7) Do you agree that estimated turnover is a better basis for such new ABS than historic turnover?

Yes

8) Do you agree that basing the initial fees on estimated turnover for the whole new business, and giving credit for fees already paid, is a sensible way to deal with such new firms?

Yes

9) Do you agree it is fairer to base the charges for a brand new ABS on estimated turnover?

Yes

10) Do you agree that ABS should pay a compensation fund contribution on the same basis as recognised bodies?

Yes, in general terms, but as per our answer to question 2, if a different approach is taken to the licensing fee for special bodies that approach should also be recognised in the contribution.

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