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Evidence to the Joint Committee from **Amicus the Union** on The Legal Services Bill

Amicus is the UK's second largest trade union, with a greater number of members in the private sector than any other union and it is the fastest growing in the public sector. Now with 1.2 million members, Amicus has members in a range of industries including financial services, manufacturing, print, media, the voluntary and not for profit sectors, local government and NHS health professionals.

Amicus also has members, who work in the legal sector, and represents those and represents those employed by the Law Society including the 370 staff in the Consumer Complaints Service. We have sent a separate letter concerning the Consumer Complaints Service workers.

Introduction

This document has been prepared on the premise that the Amicus' response to the White Paper, "The Future of Legal Services: Putting the Consumer First", is before the Committee. We have additional matters to raise now. We have also expressed the desire to give oral evidence to the Committee. We have limited our comments to six pages, as requested in the Joint Committee Press Notice.

We commented that there was no mention of trade unions in the White Paper, in spite of the very substantial involvement on behalf of our members and their families and in our own right as consumers of legal services, as well as the fact that we are most likely to be said to provide legal services, requiring regulation, unless we are exempt. There were 64,000 new PI cases passed on by trade unions affiliated to the TUC last year alone – and that excludes the employment cases.

We understand from meetings with DCA officials that there was never any intention that trade unions would be caught by the regulatory requirement and that there is no desire to do so, not least to the extent that a union rep. in a remote location may be prevented from advising a member that a grievance should be submitted (see s32 Employment Act 2002), or that it may be illegal for health & safety reps to advise members, in serious and imminent danger, of their legal rights (see s100 Employment Rights Act 1996).

Nor is there, necessarily, any intention to regulate trade unions in relation to claims management services, including:

- "advice...in relation to the making of a claim", or
- "referring or introducing one person to another", or
- "making inquiries"

(see Compensation Bill Clause 3 (2) (b) and 3 (3)), which are all activities that we properly undertake. And the need to regulate is particularly inappropriate given the nature and extent of the union legal service (see Appendix A, which repeats a section of the Amicus response to the White Paper).

Unions have conducted themselves admirably in relation to the provision of legal services to their members and their families for decades, without significant problems. To the extent that there are organisations whose activities are said to detract from that, we can readily distinguish such other organisations or their activities and would welcome the opportunity to do so, whenever this is raised.

The Lord Chancellor said in 2005: "Trade Union Legal Services are the foundation stone to a progressive and just society" and that unions have "an important role to play" as they "bring forward just claims attracting compensation for those who deserve it and promoting good health and safety".

We also believe it is certainly not in the public interest to adversely affect our place in the system for the provision of legal services. The Regulatory Objectives (Clause1) rightly have at their forefront "improving access to justice".

We concluded: "There is much of a potentially positive nature in the White Paper. Undoubtedly that would be the response of all those who wish to put the consumer first and to maintain or improve access to justice. We have a continuing strong motivation to maintain or improve the extensive legal services available to our members and their families, to promote access to justice for all and to speak out for Amicus as a consumer." We maintain that stance.

How are Unions Caught?

Let us start by confirming that Amicus has no desire to undertake any “reserved legal activity”, as we understand the meaning expressed in Clause 9 (1) as it stands. We are advised by the DCA, that “litigation” for the purposes of Clause 9 (1), does not include matters under the jurisdiction of the Employment Tribunals. We are aware that other unions do carry out activities that would be caught by Clause 9 (1) as it is now.

And we are given to understand that, when the Compensation Bill becomes law, additional activities will be regulated and added to those covered by the Legal Services Bill. Those activities are expected to include those mentioned above (Compensation Bill Clause 3 (2) (b) and 3 (3)). In the White Paper on page 56, it is specifically stated that “claims management services” are to be added to the list of activities, following the passage of the Compensation Bill.

Our officials and reps (and the officials and reps of other unions), by the very nature of their status are likely to engage in “legal activities”. Among other things, they can complete applications for tribunals and have historically represented members at tribunal hearings. In personal injury matters, it is likely that reps and officers will advise members and members of their families to submit claims. These are inevitably referred on to our lawyers.

Further, whenever a union employs a solicitor or barrister, for example, as they do and as Amicus does, this may cause the union to be regulated as an Alternative Business Structure. Our lawyers have no problem at present with being regulated by the Law Society, or Bar Council.

We appreciate that the most likely outcome in our favour would be that of **an exemption for trade unions**, either on the face of the Act or otherwise. We hope to set out why this is justified and appropriate.

Why don't Unions want to be regulated?

- The **burden of regulation** is costly in terms of resources (and unnecessary). In the context of Clause 3 (3) & 23 (3) of the Bill, and in the context of the activities we undertake and the context in which we undertake them, we would argue strongly that regulation of unions is not needed and not proportionate. Otherwise in the context of Clause 1, an exemption for trade unions is certainly not inconsistent.
- The LSB Regulator must ensure that there is **indemnity insurance** (see draft Legal Services Bill Schedule 11 Part 3 and explanatory notes paragraph 212 on page 46).

Many unions do not have or have abandoned indemnity insurance due to cost. Unions have always had the resources to pay for their mistakes.

- There is a **requirement for competition** (see Clause 1 (1) (d) The Regulatory Objectives). It is simply inappropriate between trade unions (when there is almost invariably no cost to the member of the provision of legal services by the union), and to require unions now to compete overtly with claims firms and others, will not help anyone. There are 115 mentions of the word “competition” in the Bill and accompanying documents.

Nevertheless, we support the principle that all those involved in the provision of legal services should advise individuals of alternative funding options. We believe the unions’ legal service (no fee: win or lose) to be the best available. **There should be a clear obligation on all legal service providers, including insurance companies, to inform fully and properly consumers of the options available to them.** We are happy that those to whom we refer cases are obliged to do so.

- There is enough for the new regulator to do now and **if there are problems in the future, the regulatory system could be brought into play.**

We believe we have successfully argued in relation to the Compensation Bill, that there are good reasons for exempting unions from regulation.

There are additional problems associated with **ABS status**. “In order to assess the suitability of a prospective ABS firm, the authorised FLR must be satisfied that the prospective ABS has attained the set standards. In particular, a prospective ABS firm would be required to satisfy the LSB’s compensation fund and indemnity insurance requirements and to nominate a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA) to ensure that the conduct of legal business and practice management is in accordance with the regulatory rules.” (see page 72, paragraph 13.9 of the Regulatory Impact Assessment).

What otherwise is special about independent trade unions?

Our status is that of not-for-profit businesses (by definition), but we are also **democratic membership organisations** - effectively owned by the members only and we all operate in a manner, **governed by the rule book**.

Trade Unions are **regulated in this by statute** – the Trade Union and Labour Relations Act 1992. This includes the need **to prepare and register financial information, to elect officials, and to register with and be subject to regulation by the Certification Officer.**

The Certification Officer can hear complaints from members about any breach of rule and this includes those rules (which all unions have) governing the provision of union legal services.

There are effective complaint and appeal procedures within the rules of trade unions that can be invoked by members, often through their branch which can result in a matter, including the provision of legal services, being considered, or reconsidered by the wholly elected Executive Committee and even annual or biennial conference.

Trade Unions also have a status in international law, reflected in Article 11 of the **European Convention on Human Rights**. Making and forming trade unions, of necessity requires that we are not unnecessarily encumbered in carrying out our business.

Other membership organisations differ in material respects. One such mentioned in discussion is the Automobile Association. Currently the AA's website confirms that "In 1999, members voted overwhelmingly in favour of the AA demutualising and joining the Centrica group in a £1.1 billion acquisition." It is simply not possible for an independent trade union to act in this way.

And there are a range of other points that militate against regulation...

- Unions and their law firms have a reputation, even amongst insurers and with the judiciary, of **responsible behaviour in relation to claims**: We do not take frivolous claims and claims are dealt with efficiently
- Unions provide an additional layer of "regulation" in that we **select specialist lawyers, set high standards and protocols** for them and deal with **member complaints**. And that is in addition to Law Society Regulation of our lawyers
- It is in **our vested interest** to ensure that the service is second to none
- It is in **our interests to pass on claims as soon as possible** in a long established and effective way
- Unlike other consumer groups, such as CABx, we have **a continuing relationship with members** and that we have legal services second to none is a significant **factor for recruitment**

- Unions generally make **no deductions**. In fact this is not just “no win – no fee”, but **“no fee: win or lose”**
- Unions provide a service to **members’ families**, for PI cases
- Unions seek to link the work they do on compensation with **prevention and improvements for the future**.

For example: In a discrimination case Union representation is more likely to have an eye to a continuing working relationship and less of a focus on compensation, compared to a non-union lawyer operating on a contingency fee; and in PI cases we want to see lessons learned to prevent recurrence.

UNIONS DO NOT THINK THAT A COMPENSATION CLAIM IS NECESSARILY THE FIRST OPTION.

The Consumer Panel

We have said we believe the unions should be recognised as a consumer and representative of many consumers and should have a place on the Panel. In the Civil Procedure Act 1997, the Civil Justice Council “must include...persons able to represent interests of particular kinds of litigants for example...employees”. There should be a similar provision in this Bill.

The Office for Legal Complaints

To be effective from the outset and in the long term, the OLC should be based around the Law Society’s Consumer Complaints Service and remain located in the West Midlands and London, using the expertise developed there and to minimise cost and, not least, avoid disruption to the workforce.

We welcome any further opportunity to be heard in relation to the passage of the Bill and to respond to any concerns that may be raised about our stance.

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APPENDIX A

Amicus' interest – our Legal Services

Amicus delivers an effective high quality extensive Legal Services package. The key features are:

- employment advice and cover to pursue claims
- support to pursue personal injury cases
 - whether work related or not
 - for family members, as well as members
- free legal advice service
- conveyancing
- free wills and a probate service.

With the exception of conveyancing and probate, this service is at no cost, win or lose.