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Comments from **Amicus the Union** on the White Paper

THE FUTURE OF LEGAL SERVICES: PUTTING THE CONSUMER FIRST

For the reform of the regulatory framework for legal services in
England and Wales

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 employed by the Law Society's Consumer Complaints Service, which employs over 300 staff. We have sent a separate letter concerning the Consumer Complaints Service workers.

Amicus' interest – our Legal Services

We represent a very large section of the consumers of legal services – and yet there is not one mention of or reference to trade unions in the White Paper and our specific views are not reflected in the document.

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.

Trade unions generally are arguably the largest “stakeholder” for claimants in the UK. This covers those looking to pursue personal injury and employment cases in particular. This support has existed for decades, without fears of a “compensation culture” or people losing out in the hands of unscrupulous representatives.

Amicus has recently grown to a membership 1,179,850. The unions affiliated to the TUC have 6.5 million members. For personal injury claims the extent of trade union cover includes family members of a member of the union (and this applies to most unions, including “the big four” Unison, Amicus, Transport and General Workers and GMB). More than 10 million people have the opportunity to have union backing for a personal injury claim. What is more, that is not on the basis of “no-win no-fee” (but no fee: win or lose).

We agree with the statements that “Trade Union Legal Services are the foundation stone to a progressive and just society” and that we have “an important role to play” as we “bring forward just claims attracting compensation for those who deserve it and promoting good health and safety”. These are the words of the Lord Chancellor earlier in 2005.

We recognise and support the right of those not in trade unions, or not related to a trade union member, to have access to justice. In fact our position in this field has facilitated that access and developed the law, where justified, in favour of all claimants.

A significant part of our interest is on behalf of our members who need access to legal services which are not provided directly by the union. We wish to see standards maintained or improved.

Neither should it be underestimated the extent to which we act as a collective consumer of legal services. We seek to enter into arrangements with our lawyers, which involve additional regulation over solicitors who are permitted to work for union members. This is so in relation to the selection of specialist lawyers, the standards and protocols, which are set for them, and the review and complaints procedures. These are in addition to the regulation by the Law Society.

It is in our vested interest to maintain or increase member satisfaction to retain and recruit members by ensuring that the service is second to none.

As a result of the fact that the White Paper neither mentions, nor was drafted with trade unions in mind, we are hampered in seeking to envisage how the legislation might impact on us.

Focus on Employment Legal Services

Let us seek to highlight the apparent lacuna in the White Paper in relation to trade unions' employment legal services, before commenting on other matters.

A union representative seeks to assist a member with a grievance or at a disciplinary hearing at work. There is a legal right of accompaniment, which was introduced by the Employment Rights Act 1999. Appendix C appears to envisage that this is a legal service, which falls to be regulated. We seek an explicit expression in the legislation that does not include such services.

A union representative, after discussions with a group of members, talks to an employer, with a view to resolving an issue over equal pay. Again the White Paper envisages this is a legal service, which falls to be regulated.

We lodge employment tribunal applications and, more so historically perhaps, have represented members at hearings. Other unions' officials also advise and assist

members in this way. We also represent members before statutory professional bodies, such as the Nurses and Midwifery Council.

We understood that the government want employment disputes resolved informally whenever possible. That is what we seek to do. We act in a way primarily to continue the employment relationship. We respond differently in the context of the industrial relations environment than other legal service providers.

It is not only over this issue of employment law advice, or assistance, that we have serious concerns, but also in relation to the other activities which we undertake which are likely to amount to the provision of “legal services”.

Not only is it bad for business and society as a whole to contemplate removal of trade union representation, but having an adverse effect on such representation has implications in relation to Article 11 of the European Convention on Human Rights (and other international obligations).

To ensure this does not happen requires language in the legislation that does not include or explicitly excludes or exempts trade union legal services.

Who is Covered?

We had not fully appreciated that unions might be included, even at the time of David Clementi’s report. Indeed looking at Fig. 4 on page 58, the Office for Legal Complaints (OLC) could be forgiven for thinking they had no place dealing with a complaint by a disgruntled union member, sacked by the employer, who felt that the local union representative could have done better.

However, we see at Appendix C (on page 87) “the LSB will need clarity on a definition of legal services” and, in spite of David Clementi’s conclusion about that, there is a suggested definition:

“Advice, assistance and representation in relation to the operation or exercise of legal rights and the performance of legal obligations: and

Advice, assistance and representation in relation to all forms of resolution of legal disputes.” And

“The definition would **exclude**:

...advice which is not given in the course of a business”.

It appears that we are considered to operate a business. “The Not For Profit (NFP) sector will be brought within the regulatory scope of the LSB and the ABS [Alternative Business Structures] licensing scheme” declares the White Paper (on page 50).

The White Paper makes a number of references to Citizens Advice Bureaux and (on page 50) we note that, whilst the concept of group licensing exists, it envisages a licence to an umbrella organisation citing CABx (having responsibility for individual *business units*) as the example. In fact the CABx do not share the level of experience that the unions have, especially in the field of employment law and neither do they have the long term relationship with their clients as we do with our members. This long term relationship is a driver for and works as a result of the union’s continued efforts to sustain and enhance member satisfaction.

The references to “waiving the licence on competency grounds” (page 51) (referring to quality marks) would not appear to contemplate trade unions.

Whilst the reference to “waiving the licence to increase access to justice” is precisely our point, the examples given are of “a very small organisation. Or...a charity for which legal services are ancillary to their main business and rarely called for”. Clearly, this is not the case of Amicus or the other unions.

We believe it is certainly not in the public interest to adversely affect our place in the system for the provision of legal services. The objectives (page 20) include to “improve access to justice”, but such an objective is also entirely inconsistent with any proposal to raise the small claims limit or change costs regime to an extent that disables the unions from providing effective legal support and assistance.

There is provision for the LSB to remove activities from its regulatory control (page 55) and this is a power that could be used to enable Amicus and the other unions to carry on their legitimate business, but:

- We have no guarantee this would happen, and
- there is no guarantee it would continue, and
- the White Paper envisages an initial inclusion followed by possible removal after a period of consultation and reporting.

There is also reference (on page 52) to the fact that “The LSB will have a statutory duty to determine whether a legal service should be regulated. “ This may be available to assist the unions to continue to provide legal services, but similar points arise to those made in the paragraph above.

We note (at page 55) that “Legislation will provide for those legal services that currently may only be provided by certain qualified members of the legal profession to form the core activities over which the LSB will have regulatory control.” However, we need to see the draft and to ensure that we are excluded. Further, we note that “claims management services” are to be added to the list of activities on page 56, following the passage of the Compensation Bill. We understand we are covered by the definition of one who provides claims management services (even though we have been told we will be exempt). (See comment by Baroness Ashton on the Second Reading of the Bill on 28 November 2005).

The Problem of Regulation

We have assisted in relation to the expression of the desirability for exemption for trade unions from regulation under the Compensation Bill. Those reasons have been accepted and we have received assurances about that.

Otherwise, the problems of regulation for us are also evident from comments made above. In addition, regulation, particularly as a concept that we have no experience of or structures for, would be costly for us and burdensome.

Further, we do not carry indemnity insurance and would not wish to be obliged to do so. We have sufficient resources to cover any foreseeable claim. (Most trade unionists do not require their unions to carry such insurance) This has not been a problem for our members – we readily pay for our mistakes. We appreciate the references to the Better Regulation Executive and the principles of good regulation (on page 27) and to the acceptance in the Hampton Review for taking “proportionate measures based on risk”. The premium quotes from the risk averse insurance industry are disproportionately high. The insurance companies require a level of profit from the provision of legal cover that we have concluded is not in our members’ interests to pay. We also wish to avoid the fundamental conflict of interest between

legal expenses insurance and claims – especially as we can be seen to compete in this field.

We also do not think it is in the public interest that we should be obliged to compete in the way envisaged.

The Presumption in Favour of Competition

In the foreword, the Lord Chancellor, he refers to the finding by the Office of Fair Trading (OFT) that there was insufficient competition in this field. That was likely to be their finding in the report of March 2001 entitled “Competition in Professions”. (None of those who were interviewed were from trade unions or even union law firms).

The Report begins from the stand point that “Markets generally work best for consumers when there is

- unrestricted competition between existing suppliers, and
- unrestricted potential competition from new suppliers and from new forms of supply”.

Generally the OFT says its “goal is to make markets work well for consumers. Markets work well when there is vigorous competition between fair-dealing businesses.” and the “OFT will uproot and deter all forms of anti-competitive behaviour” but then that is its ‘raison d’être’ from the Competition Act 1998.

We refer to the White Paper at page 16 and on page 37 where it states that the “LSB and OFT should have specific responsibilities in relation to the competition objective”.

Objectives expressed in the White Paper include to promote competition and improve access to justice, however, this presumes the two work in tandem and they do not necessarily. The concern must be for “putting the consumer first”. Whilst the presumption in profit sector may be that vigorous competition is beneficial, the public good is not served by unions being obliged to use up resources competing with those, like claims management firms, who are keen to invest in expensive advertising campaigns which add to the myth of the compensation culture. We are not in the legal services trade as other are. Neither is it helpful to encourage inter-union rivalry. Furthermore, if regulated we may be obliged to direct members to the possibility of

inferior and costly private services, which has no benefit, in the employment circumstance and our lawyers may do in other cases.

We should perhaps be encouraged to shout louder about what it is that we do in this field, but others should not fail to tell consumers of the availability of the option of our services. In many cases, perhaps, they fear this would result in the consumer choosing the union option. In fact, if a consumer were to be given a proper explanation of “no win – no fee” and the alternative “no fee – win or lose”, together with monitored expert representation, the decision to select the option of union support would be self evident. Legal service providers precede any explanation of the options with the question “Is any member of your family in a trade union?”

There should be a clear obligation on all legal service providers to inform fully and properly consumers of the options available to them.

Other matters

The LSB, OLC and FLRs

In principal we support the White Paper’s position on a Legal Services Board, the Office for Legal Complaints (paid for by legal sector) and, subject to our inability fully to envisage these in all circumstances, Front Line Regulators.

In the context of legal professionals, at least, we understand and support the separation of front line regulators’ regulatory and representative functions. However, the comment in the Clementi report that doubts “whether systems run by lawyers could achieve consumer confidence” does not take account of trade unions’ complaint system, standards and reviews.

We also support the desire for flexibility over the legal services to be regulated and the manner of regulation.

We note the reference to the need for the LSB to consult (see page 34 and 35) and this should include trades unions, not least as consumers. We must again emphasise that (even though we be excluded from regulation) the provision of legal

services to the consumer cannot be examined without effective reference to the role of the unions. It follows that we should be consulted and we are not.

The Consumer Panel

The Consumer Panel (see page 10 & Appendix A) has no union presence. It should have. The White Paper says: “Their involvement has been invaluable and their role will continue throughout the process of reform to ensure that the consumer voice will be heard.” Indeed the Consumer Panel has a role in the new arrangements (see fig 2 on page 12 and page 20 bullet point 5).

MDPs and ABSs

We do not object to Multi-Disciplinary Practices, or Alternative Business Structures. In Chapter 6 of the White Paper we see potential benefits, but nothing of the pitfalls. Licensing by the FLR or LSB will help.

One concern for the consumer must be to ensure that there is no conflict. In our view conflict would clearly arise in the case of a liability insurer (or one a group including a liability insurer) investing in a legal services provider who sought to pursue claims of a sort that the insurer has covered. In this regard we do not believe that insurance companies can give impartial advice on the legitimacy or value of claims, when they are the organisation who makes the payment.

Further, we agree with David Clementi that the problem is “whether systems run by lawyers could achieve consumer confidence”, so that the perception of conflict should be avoided.

The “Stop Now” power

We agree the extension of the “stop now” power (consumer enforcement order) to the LSB under the Enterprise Act 2002 is a good thing (see page 32).

Conclusion

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 have no objection to positive change and welcome it.

We made a comment earlier in connection with a specific issue but generally we confirm that we appreciate the references to the Better Regulation Executive and the principles of good regulation, including intervention only where necessary we appreciate the acceptance in the Hampton Review for taking “proportionate measures based on risk”.

We have no doubt that the public interest is best served by ensuring that we are not hampered in our genuine desire to advance access to justice and by promoting the great service provided by Amicus and the other unions.

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20 January 2006

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