

THE DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

**REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES
IN ENGLAND AND WALES**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL13/04)**

JUNE 2004

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 5,400 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally;
- To promote health and safety.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

Colin Ettinger	President, APIL
Allan Gore QC	Vice-President, APIL
Mark Harvey	Secretary, APIL
Roger Bolt	Treasurer, APIL
David Marshall	Immediate Past-President, APIL

Any enquiries in respect of this response should be addressed, in the first instance, to:

Miles Burger
Policy Research Officer
APIL
11 Castle Quay
Nottingham
NG7 1FW

Tel: 0115 958 0585
Fax: 0115 958 0885

E-mail: miles.burger@apil.com

EXECUTIVE SUMMARY

In summary, APIL presents the following views in relation to the DCA consultation of the review of the regulatory framework for legal services in England and Wales:

- APIL's primary objective is to ensure that the interests and welfare of the client comes first.
- APIL believes that any review of the regulatory framework must recognise that the provision of legal services is a profession, carrying with it certain and onerous fiduciary burdens.
- APIL considers that any regulatory scheme must set and enforce appropriate quality standards across the entire profession and, while specific to personal injury law, APIL's College of Personal Injury Law (CPIL) offers a successful template for such accreditation and standards.
- In terms of regulatory models, APIL endorses the adoption of a B+ model with the additional criteria that 'legal services' should be defined – a B+*Plus* regulatory model in effect.
- APIL proposes that within any new regulatory model specialist legal associations need to play an important role by developing and setting standards and that the new regulator should have a duty to consult such organisations.
- Any governance regime which the regulatory model adopts must be both accountable to the consumer and transparent in its workings. In addition, APIL feels that a board structure with an equal distribution of lay and practitioner members elected on merit is the most appropriate structure.
- APIL believes that it is ineffective to deal with complaints within a single procedure, and suggests that:
 - Conduct and disciplinary complaints should be dealt with directly by the regulator;

- Service level or consumer complaints should be handled directly by the service provider; and
 - Competence complaints should be referred back to the lawyer's accreditation body.
- APIL supports the further development of Multi-Disciplinary Practices (MDPs) and Legal-Disciplinary Practices (LDPs), on the provision that consumer interests are effectively protected against the undue influence of other interest within the business. In order to assess the feasibility of MDPs, APIL feels that it will be worthwhile to developing LDPs in the first instance. LDPs have the additional protection that they will be governed by the legal codes of practice.

THE REGULATORY FRAMEWORK FOR LEGAL SERVICES

Introduction

1. APIL welcomes the opportunity to comment on the Government's review of the regulatory framework for legal services in England and Wales, headed by Sir David Clementi. Our response to this review is on behalf of the many personal injury victims on whose behalf APIL members act. APIL's primary objective is to ensure that the interests and welfare of the client comes first. As such, we believe that this aim should be among the over-riding considerations within any new regulatory regime. In addition the following factors are listed by the consultation document as possible objectives:

- Maintenance of the rule of law
- Access to justice
- Protecting the consumer interest
- Ensuring fair competition within the legal services industry
- Upholding a confident, strong and effective legal profession
- Promoting public understanding of legal rights

2. APIL agrees that *"the first step in defining any regulatory regime is to make it clear what the objectives of the regime are"*¹, and while we do not object to any of the above objectives, we consider that there are several others which are necessary additions for any new regulatory structure. These include:

- The setting and enforcing of appropriate competence standards;
- That all processes should be transparent to both the profession and the consumer;
- There must be effective protections for the consumer.

¹ Consultation document - Page 18, paragraph 11

3. The aim of any successful regulatory regime must be to deliver its objectives via effective policing. By the appropriate monitoring and policing of the above detailed aims, APIL firmly believes that the rights of injured people will be protected.
4. APIL considers, however, that the majority of personal injury lawyers, and indeed lawyers in general, already embrace these objectives in their current work and behaviour through their adherence to professional standards.

Personal Injury Law – A profession, not an industry

5. APIL is concerned that the consultation document fails to fully comprehend the distinction between the supply of legal services as a profession and the supply of legal services as an industry. Unlike an industry, the people working in legal services – predominately solicitors and barristers – have a fiduciary duty to their client, outside of the simple contractual relationship. These duties of trust – similar to that between a trustee and a beneficiary – mean that they are professionally and ethically bound to work in the best interests of their client, regardless of their own situation. A further distinction of this fiduciary relationship can be seen in the fact that legal professionals, including solicitors and barristers, are officers of the court. For example, unlike a plumber who shares only casual contractual relationships with his client, lawyers are professionally bound to protect and promote their client's welfare, even to the detriment of their own. This badge of probity, that the title of officer of the court bestows, can be further seen in the fact that solicitors and barristers are allowed to hold money for clients. In addition, all practising solicitors and barristers can be struck off for serious professional misconduct and prevented from practising – plumbers are not regulated in a similar fashion.
6. APIL is a leader in both promoting client focused service and developing professional standards. We have just launched a 'Consumer Charter' campaign, where APIL members sign up to a series of promises defining

the standards of treatment of client and their claims². In terms of professional standards, the College of Personal Injury Law (CPIL) was founded by APIL in September 1999 *“to build and recognise expertise in personal injury law through training and professional development.”*

The Association of Personal Injury (APIL) as an organisation

7. The Association of Personal Injury Lawyers (APIL) was established in April 1990 by a group of barristers and solicitors working for claimants, dedicated to the improvement of services provided for victims of accidents and disease. APIL currently has over 5,400 members in the UK and abroad.
8. APIL’s head office, based in Nottingham, is staffed by both dedicated full-time and part-time employees under the direction of a chief executive, reporting to APIL's elected officers. Members of APIL subscribe to a code of conduct and support APIL's main objectives.
9. Membership of APIL is on the basis of a commitment to APIL's objectives and this code. The development of the specialist CPIL accreditation scheme was developed as a guarantee of competence and specialisation.
10. The aims of the Association of Personal Injury Lawyers (APIL) are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally;

² Please see Appendix A – Copy of APIL’s Consumer Charter

- To promote health and safety.

11. As detailed, all APIL members are bound by the APIL Code of Conduct, which is rigidly enforced with a prescribed complaints and enforcement procedure³.

Accreditation, standards & continuing specialism in the professions

12. APIL believes that a central aim of any regulatory regime for legal services must be to set and enforce appropriate quality standards across the entire profession. It is vital that these standards are accredited by independent sources and policed by the regulator. While specific to personal injury, APIL's College of Personal Injury Law (CPIL) offers a successful template for such accreditation. The general standards which CPIL promotes would provide a robust basis upon which to base all accreditation within the wider context of legal services. Such a basis would allow for all systems of accreditation to carry the same weight, so that accreditation for family lawyers echoed the standards for immigration lawyers. This will mean that the industry is governed by a series of common standards for a common purpose, this common purpose being for the protection and benefit of the consumer.

13. APIL believes that under the umbrella of regulation providing supervision of both the standards set, and systems by which accreditation is awarded or removed, it should be possible in the public interest to :

- Provide accreditation in a wide variety of specialism (examples could include contentious and non-contentious legal services);
- Provide accreditation in a variety of functions (an example could include advocacy by regulation of the system of accreditation leading to the rank of QC);
- Set common standards for all relevant accreditation systems.

14. The particular value of CPIL accreditation for personal injury practitioners is that it drives up standards, while always ensuring that there is a basic level of competence. It also acts as an independent 'kite-mark' of quality within its specified field, so that consumers can effectively identify levels of competence and specialism. For example, GPs (general practitioners) do not hold themselves out to be specialists in any particular area of medicine. In contrast, however, a consultant will often identify himself as a specialist of some description (i.e. an oncologist), and this specialism can be verified by his membership or fellowship of a particular specialist College within the BMA and/or a relevant accreditation in that specialism. Finally, CPIL can provide further consumer protection - via the use of a complaints system - wherein anyone who falls below the standard expected of an accredited member can be stripped of their accreditation.

15. The College of Personal Injury Law (CPIL) is the training division of the Association of Personal Injury Lawyers (APIL) and was established in September 1999 to build and recognise expertise in personal injury law through training and professional development. It has been supported by the Lord Chancellor, the Law Society and the National Consumer Council. Its aims are:

- to establish a recognised quality standard of competency and expertise
- to provide flexible and affordable training, specially designed for personal injury practitioners, within a specialist educational programme
- to help the consumer recognise expertise and specialism within the profession

16. CPIL was formed in partnership with The College of Law and is supported by the Law Society and the General Council of the Bar. CPIL is monitored by an Academic Quality Council (AQC), administered by The College of Law. The AQC oversees the academic quality and integrity of all CPIL

³ See Appendix A for copy of APIL Code Of Conduct and detailed Complaints Procedure.

programmes. Independent panels assess senior fellow applications and appeals procedures.

17. CPIL has five levels of membership: senior fellow, fellow, litigator, member and associate. All levels have upwards of five years' experience in personal injury law. Once someone has qualified for CPIL membership, however, in order to maintain this level of membership, a set number of hours of CPIL training must be undertaken over a specified period. For example, senior fellows have to complete 50 hours worth of CPIL training over a five year period. The amount of training that each CPIL member receives is closely monitored and scrutinised via entries in their CPIL training log. Conversely, if a CPIL member fails to fulfil the minimum training requirements required their CPIL membership can be revoked.
18. CPIL enjoys a membership of well over 700 practitioners who are specialists in personal injury law for claimants. All members are committed to continuous training and development to ensure that claimants receive access to justice and full compensation for their accidents or injuries.

Regulatory Models

19. APIL supports the adoption of a B+ based regulatory model, with the additional criteria that 'legal services' should be defined - a B+ *Plus* regulatory model, in effect. This has the advantage of bringing under the umbrella of regulation all providers of legal services including claims management services, and not simply those present professions that provide such services.
20. The B+ model within the consultation document involves the current regulatory structures being retained, but with the separation of the regulatory and representative functions – analogous to the General Medical Council (GMC) / British Medical Association (BMA) division in the medical profession. In summary, the advantage of a regulatory structure initially based on the B+ model is that it would improve the promotion of

the public and consumer interest but with the direct aid, guidance and experience of the professions. Thus we advocate that:

- Both regulation and accreditation fall within the regulation structure
- Representation falls outside the regulation structure

21. Overall, the advantages of the B+*Plus* regulatory model are:

- i) By the “unbundling” of the regulatory function from the representative function, there would be less potential conflict of interest between the two separate functions. For example, there could be no accusations that regulation was being decided by lawyers representing lawyers governing lawyers. The regulatory process therefore becomes transparent and any suggestion of self-interest is removed. In terms of precedents, this separation has been achieved successfully in utility unbundling around the world.
- ii) The retention of an element of self-regulation would mean that any new regulatory scheme would reflect both international and European principles concerning the delivery of legal services⁴, and this would help maintain the international reputation of British law. The self-regulatory element of this model would also limit any real, or perceived, undue influence by the Government, further protecting the professions standing within the international legal community.
- iii) Any new regulatory system would be able to be built on the existing infrastructure of the professional bodies, including their strengths, which would facilitate any change more quickly and without incurring significant additional cost.
- iv) The regulatory standards, rules and enforcement mechanisms would still have the input of experienced practitioners, so be

⁴ The UN principles on the role of lawyers provide that lawyers are entitled to form professional associations and to regulate themselves: “*Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body ... shall exercise its functions without external interference.*” The European Union relies strongly on self-regulation by professional bodies. The resolution of the European Parliament on market regulations competition rules for the liberal professions on 11th December 2003 stated: ... “*the importance of ethical conduct, the maintenance of confidentiality with clients and of a high level of specialised*

designed with a high degree of technical input and direct feedback from the legal service marketplace.

- v) With the profession still actively involved in the regulation it is more likely that they will 'buy-into' any new regulatory regime, and abide by the spirit of the new regulations. In addition standards would be maintained by the subsequent peer pressure within the self-regulation structure.
- vi) The umbrella of wider regulation would bring under supervision providers of legal services other than barristers or solicitors (i.e. claims management services).

22. In terms of the separation of the representative functions and the regulatory functions within the professional bodies, and whether there should be a separate entity for each, APIL feels it is for the representative bodies themselves to specify. We would, however, like to stress that APIL represents claimant lawyers and their clients, and has been doing so effectively and efficiently for almost 15 years. Our support for the benefits of model B+ should not be taken to imply any perceived failings in self regulation, but should be seen as support for the introduction of an element of independence and transparency in the regulation of legal services provision in the future.

23. One problem with the model B+ structure, without the modification suggested at paragraph 19, is that it does not allow for regulation of entities such as claims management companies (CMCs). The recognition that claims management companies pose an unregulated threat to injured people was recently acknowledged by the Better Regulation Task Force's report into 'compensation culture'. The report stated that the claims management companies "*earn their money by non-transparent and complex systems of referral fees and charges*"⁶. The report called for the recently-formed Claims Standards Federation (CSF) to approach the

knowledge, necessitates the organisation of self-regulation systems such as those run today by professional bodies and orders".

Office of Fair Trading to apply for approval of its Code of Practice by September 2004. Within model B+ if the CSF gained approval for its code of practice, it would be regulated by the Legal Service Board (LSB) in the same manner as the Law Society and Bar Council and to the same standards.

24. APIL is concerned, however, that *“not all companies have joined the Federation”*⁶. In order to ensure regulation of CMCs, APIL proposes that the LSB should define what constitutes ‘legal services’, so that non-regulated providers of legal services or legal advice would be held to a defined set of standards. This would allow for the consumers’ protection as disreputable providers would be effectively regulated and policed.

25. In particular, any definition of ‘legal services’ needs to be able to include the following types of organisations within its remit:

- Claims management companies (CMCs);
- Legal expenses insurers;
- Voluntary advice centres, such as Citizens Advice Bureaux and Legal Advice Centres; and
- Trade Unions

⁵ The Better Regulation Task Force report – *‘Compensation Culture: Exploding the urban myth’* - 27 May 2004 (the report can be downloaded at <http://www.brtf.gov.uk/taskforce/reports/entry%20pages/Litigcompensation.htm>) - page 21

⁶ The Better Regulation Task Force report – *‘Compensation Culture: Exploding the urban myth’* - 27 May 2004 (the report can be downloaded at <http://www.brtf.gov.uk/taskforce/reports/entry%20pages/Litigcompensation.htm>) - page 21

26. One way in which 'legal services' could be defined would be to follow the example of the Financial Services Authority (FSA) definition of the services under its umbrella of regulation. Within section 22 of the Financial Services and Markets Act 2000, under which the Financial Services Authority was established, the classes of activity and categories of investment to which it relates are defined as:

22. – (1) ... an activity of a specified kind which is carried on by way of business and-

(a) relates to an investment of a specified kind; or

(b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried out on in relation to property of any kind.)

27. Within Schedule 2 there are more detailed provisions amplifying what is covered under section 22. For example, "Dealing in investments" is defined as:

(1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as a principal or as an agent.

(2) In the case of an investment which is a contract of insurance, that includes carrying out the contract.

28. The use of a similar structure for defining 'legal services' within the proposed regulatory model – APIL's B+Plus model – will allow for new and innovative models for the provision of legal services to be included within the regulated area governed by the Legal Services Board. This can only be in the public interest as this will ensure that all activities which are defined as being a 'legal service' will have to meet a series of minimum standards. This will inevitably improve the level of service of all suppliers.

Disadvantages of model A and model B

29. In addition to the detailed advantages of model B+, APIL's support for this model is based on weaknesses of the two other models suggested by the consultation document: model A and model B.

30. Model A proposes the establishment of an overarching Legal Services Authority (LSA) which would directly regulate all the services within the regulatory net. All regulatory functions would be removed from the professional bodies, leaving them with only their representative function. Such a structure would be analogous with that of the Financial Services Authority (FSA). The disadvantages of such a model are:

- i) Who watches the watchmen, or in the present case, who regulates the regulator? Model A increases the scope for the Government to be involved in the regulation of legal services. Regulatory powers would be vested in a single body which would be appointed through or via direct involvement of the Government. It is in the public interest to have a strong and independent legal profession, free from the influence of Government. As such a model A regulator would be a direct attack on this independence.
- ii) The cost of establishing a new overarching body would be huge. This expense would be born by the legal profession itself, and would eventually be passed onto the consumer. APIL is concerned that the general public already has fears over the cost of legal services, and research has shown that cost is a major factor in deterring the public from using solicitors and gaining access to the courts. This additional expense would thus hinder access to justice.
- iii) The lack of practitioner involvement in a model A structure would lead to lawyers not "buying into" the new system and the regulations issued soon becoming out of touch with the marketplace and with the professional practice of law. In particular lawyers are driven by a strong sense of professionalism and ethics, which naturally they take pride in. By taking ownership of the rules and regulations under which they want

to be guided by, and by their technical input, the standards of the professions can only increase.

- iv) The size and lack of practitioner involvement in a Legal Services Authority (LSA) would mean that decision making processes would become over-bureaucratic (requiring wider consultation) and therefore slow.
- v) Model A fails to appreciate the professional nature of many suppliers of legal services – i.e. solicitors and barristers – and would simply regulate along lines of service.

31. In contrast, Model B would keep the regulatory functions in the hands of the existing professional bodies such as the Law Society and Bar Council, but establish a body as a central overseer to these organisations. Under this model, regulatory functions would be given to the professions in addition to their representative functions, subject to oversight by the Legal Services Board (LSB). The disadvantages of such a model are:

- i) The retention of representative and regulatory functions within a single body will be perceived by the consumer as smacking of self-interest. It can be viewed as lawyers who represent lawyers making rules for lawyers. Clients may view actions by the professional bodies as being in the profession's best interests rather than the consumer's. It should be noted, however, that this view is simply a perception and may not represent the decision making process in either of the professional bodies.
- ii) The perception of self-interest can also be seen to be partially driven by the lack of non-legal input into the legal regulatory process. Basing regulation on the existing professional bodies may provide inadequate lay input, at least in the absence of a significant increase in lay membership of Government organisations.
- iii) Due to the fact that model B largely retains the current regulatory structure, it fails to include adequate mechanisms for policing current non-regulated legal service providers such as claims management

companies, or to supervise existing regulation to see that it in fact operates in the public interest.

Specialism and Accreditation in APIL's Model B+Plus

32. APIL believes that while the Law Society is able to represent the interests of solicitors across the board, it is not always able to represent the interests of particular specialist sectors of the legal profession. Indeed the Law Society may have internal conflicts in trying to represent the interests of all solicitors. For example, the Law Society represents both claimant lawyers and defendant/insurer lawyers who traditionally are on opposite sides of the adversarial process and have considerably different aims.

33. As solicitors and barristers become more specialised the Law Society and Bar Council are less able to represent the interests of particular sections of the legal profession. The growth and increasing importance of special interest groups, such as APIL and SFLA (Solicitors Family Law Association) demonstrates the need for specialist sections of the professions.

34. Specialist lawyer associations have an important role in developing and setting standards, developing new ways of practising, providing specialist guidance, bringing together practitioners for training, exchange of information and also advising government, the courts and other agencies on good practice, law reform and procedure. These roles are vital. APIL's experience is invaluable to policy makers and administrators in the personal injury legal field. An important aspect of this role is that it develops using the experience of practitioners, and the development of quality standards is 'bottom-up' driven. Much of the Law Society's standard setting and regulation is 'top-down' driven, as well as being generic rather than specific. The Law Society model therefore can have a tendency to be 'one size fits all' and is not always able to be sensitive to the differing needs of particular sections of the profession.

35. Within model B+, APIL sees itself as being similar to the role of what are known as the 'crafts' in the British Medical Association (BMA). The 'crafts' represent differing sections of the medical profession, and each 'craft' helps guide policy and advises the main BMA council. APIL envisages itself acting in a similar capacity in its relationship to the Legal Service Board (LSB). Yet regardless of the model of regulation chosen, APIL would want to see a more defined and enhanced role for specialist associations in any revised regulatory model. APIL believes that the new regulator should have a duty to consult various bodies, in particular specialist associations, and it may be appropriate for this role to be defined in statute. While the professional bodies may have a continuing role in representing their arm of the profession generically, specialist associations should be recognised as representing the part of the profession they cover. These could be defined by particular criteria, such as having a majority of professionally qualified members, having entrance requirements which relate to the discipline the association represents and having enforceable quality standards.

36. Although APIL believes that the specialist associations have an important and growing role to play in feeding into the new regulatory framework, particularly in relation to the setting of standards, we believe that the Law Society and other professional bodies should continue to have a representative function. The professional bodies have an important role in representing the views across their arm of the profession generally, while the specialist associations are able to speak authoritatively about the experience of specialists in their particular area of law.

Governance, Accountability and Related Issues

37. APIL considers that any new regulatory regime must be accountable to the consumer as well as being transparent in its workings. We believe as long as these principles are paramount in the development of any new regulatory regime, the consumer will be suitably protected. In general APIL

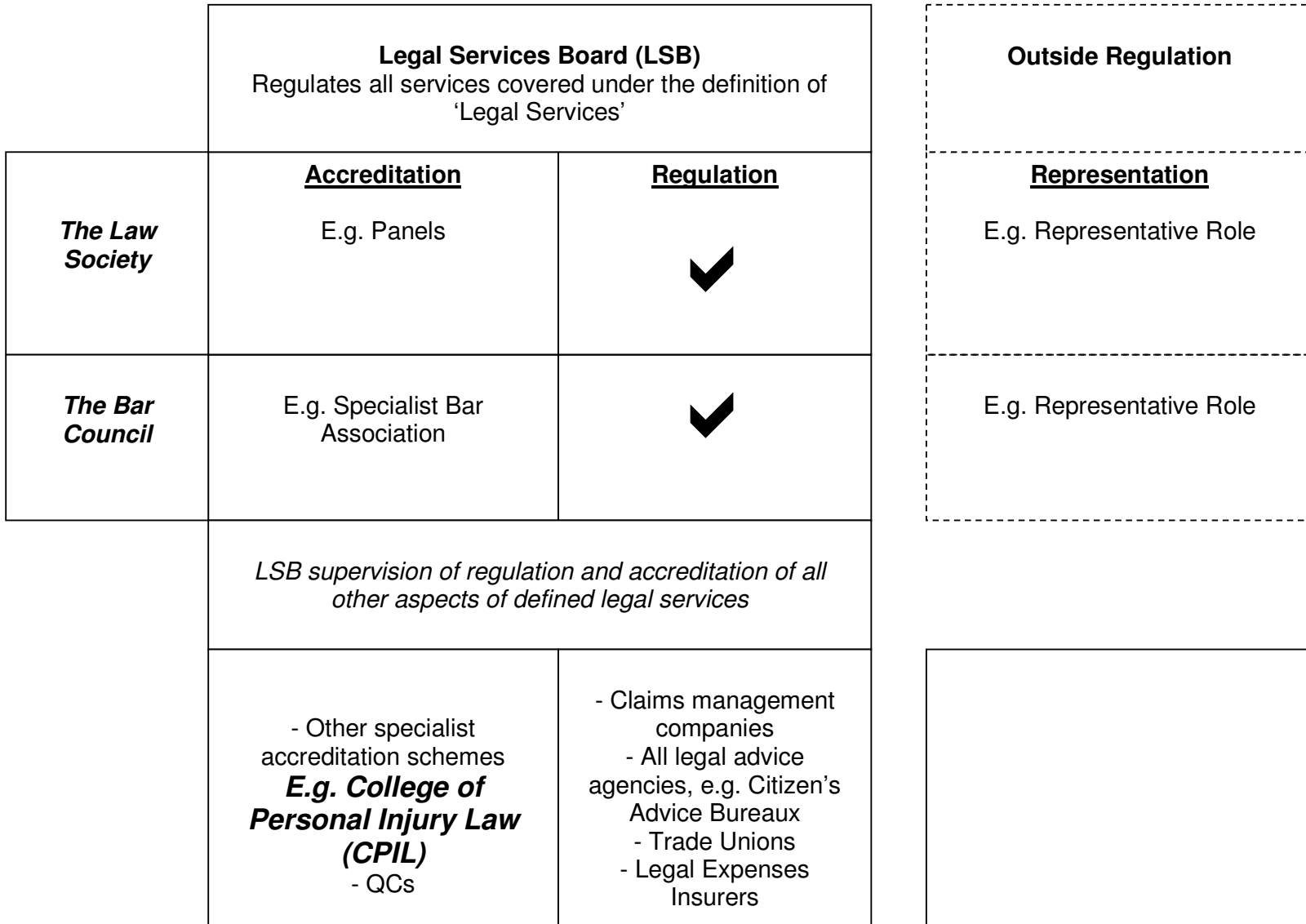
feels that these aims would be best achieved by the following mechanism being put into place within the new regulator:

- The regulator should be a board
- This regulatory board should be appointed on their own merits, and there should be a broad equality of public/lay members and practitioner members
- The regulatory board should be obliged to consult with specialist organisations (i.e. APIL and/or SFLA)
- All board members should be statutorily obliged to act in the public and consumer's best interests
- Appointments should be for a specific term, and this term should be renewable.

38. In terms of more specific recommendations, APIL assumes that the establishment of a new regulator, regardless of the model chosen, will necessitate wider consultation. As such APIL will wait until a definite model of regulation has been proposed and is being consulted on before commenting extensively on the mechanism of governance.

39. Please see Diagram 1 for a representation of the proposed structure of APIL's regulatory model *B+Plus*.

Diagram 1: APIL's proposed regulatory model B+Plus



Complaints

40. APIL believes that it is ineffective to deal with complaints within a single procedure, as the nature of complaints varies so dramatically. It would also be too onerous, too time-consuming and too expensive to demand that the regulator deal directly with all complaints, whatever type or category. Thus we propose that:

- Conduct and disciplinary complaints should be dealt with directly by the regulator – the Legal Services Board (LSB) in APIL’s proposed B+Plus model;
- Service level or consumer complaints should be handled directly by the service provider – the solicitor’s firm or barristers chambers; and
- Competence complaints should be referred back to the lawyer’s accreditation body if one exists - in respect of personal injury lawyers whom APIL represent, this would be the College of Personal Injury Law (CPIL) – or if no such body yet exists (e.g. for claims management companies) then they should be dealt with by the regulator.

41. The current complaint systems, in large part due to the troubles which faced the one administered by the Law Society, seems to have lost the confidence of the public. While APIL supports a split of the disciplinary procedure between the three above defined categories, we would emphasise the importance of maintaining information exchanges between the three bodies dealing with consumer complaints, discipline and conduct and competence complaints.

Conduct and disciplinary complaints

42. APIL believes that conduct and disciplinary complaints should be dealt with by the regulator directly. We feel that there is a strong argument for complaints about conduct and discipline to be handled by a single independent body which is seen to be easily accessible to the consumer.

From a consumer point of view it would make sense to have a single entry point – the current proliferation of complaints bodies can be confusing.

43. APIL considers that the independent regulator should be able to set conduct and disciplinary standards across the professions. These standards must be transparent and objectively measurable, and have the primary objective of protecting the consumer and upholding professional standards.

Consumer Complaints

44. APIL believes that consumer complaints should be handed back to the service providers; for example, the solicitor's practice or barrister's chambers. While standards for handling consumer complaints should be set and supervised by the regulator, to ensure that those standards are actually met, the primary responsibility for dealing with customer complaints concerning service should be dealt with by the service provider. One possible way of achieving 'buy-in' by the service providers in order to encourage effective handling of complaints, is for there to be a requirement by the regulator for all practices to have an appointed partner as a complaints manager. It would be this person's duties to co-ordinate and handle all complaints in a manner satisfactory to both the regulator's set standards and the consumers' satisfaction.

45. A further encouragement for the provider to deal with complaints 'in-house', would be to operate a policy of 'polluter pays' for any complaints which were not dealt with at this level. For example, if a complaint needed to be referred to the regulator due to the unsatisfactory resolution of it from the service provider, a substantial (almost punitive) one-off fee would be charged to the service provider in question. This penalty, however, will only be applicable in relation to genuine complaints that have not been dealt with efficiently and fairly, and would not apply to unfounded or unreasonable complaints that were not able to be solved at firm level.

Indeed, if a compliant were dismissed then the cost of the claim would be borne by the profession as a whole.

46. To further penalise persistent unsatisfactory complaints handling, the regulator should have the ability to review the complaints handling procedures in place at any particular service provider, and if they are found to be unsatisfactory the regulator would have the power to recommend change within a certain time-frame or impose other penalties including the option of removing the ability to practice – i.e. for solicitors, the withdrawal of the practising certificate – or referral of the offending service provider to his professional body for disciplinary proceedings.

Competence Complaints

47. APIL strongly endorses the use of CPIL accreditation for personal injury practitioners. As such we propose that prior to someone being able to join CPIL they would have to demonstrate that their particular practice has effective and adequate complaints procedures. These procedures would be auditable by CPIL, and any demonstration that they were inadequate subsequent to the person joining CPIL would result in the revocation of their CPIL status.

Multi-Disciplinary Practices (MDPs) and Legal-Disciplinary Practices (LDPs)

48. APIL believes that it is an unnecessary restriction not to enable lawyers to go into partnership with other people, as long there are adequate protections for the consumer. There are benefits from moving in with other organisations. The injection of external capital investment into PI practices, as well as the addition of services, will help deliver better value to injured victims. For example, a marketing firm company and personal injury firm could form a partnership which could lead to more work, more profits, a better infrastructure, and therefore a better service to injured clients.

49. In addition, there are numerous consumer advantages of having a “one-stop” shop for services. A demonstration of this would be a personal injury solicitor operating alongside a rehabilitation provider to deliver a full range of services to help the injured client return to their previous position within life. We feel, however, that any influx of funds or services should not be at the expense of legal impartiality. Injured clients should be able to feel confident that their legal representatives are acting in their best interests, not out of commercial or self-interest.

50. APIL proposes that the delivery of legal services – as part of any MDP – should contain the following safeguards, including:

- i) a requirement that the legal practice is ring-fenced from all other areas of the business;
- ii) a requirement that all those managing the business and/or owning the practice should be suitable persons and/or organisations to do so;
- iii) a requirement for all managers to be subject to the regulatory rules of the legal practice;
- iv) guarantees, through regulation, that the legal practice can operate independently and free from interference, in the provision of legal services, from non-lawyer owners, whether or not they were managers of the practice.

51. Within APIL’s proposed regulatory model, lawyers would be regulated via their professional organisations while any service which does not have a professional organisation, yet involves the provision of legal services, will come under the regulator’s direct scrutiny. This structure would apply to MDPs as well. For example, even though in-house lawyers are directly answerable to the board of directors of the company, they are still governed by the Law Society’s rules and would continue to be so. In addition, under APIL’s proposed regulatory scheme, they would be regulated by the LSB and subject to the LSB’s accreditation and complaints rules and procedures.

52. There are also consumer advantages to having non-lawyers involved in the business aspects of a legal firm. While lawyers may be excellent in regard to their legal abilities, there is not necessarily any correlation between this and the ability to efficiently run a business. APIL feels that by employing a business-person specifically for the purposes of managing the business, there will be an introduction of a more structured approach. This structured approach, however, should never be at the expense of the client orientated obligations of the legal practitioner; the needs of the client must override the needs of the business. APIL believes that the above detailed consumer protections will minimise there being any possible chance of undue influence. In fact, a more structured business focused approach may result in the introduction of more customer focused services – i.e. customer relations – into the business.

53. More business involvement may also lead to more innovative business styles and structures being introduced, as well as efficiencies via improved information technology and systems.

54. In respect of LDPs – where lawyers from different professions work together – APIL believes that these need to be governed by strict consumer protection codes. These will be provided by regulation by the Legal Services Board, and LDPs will also to be subject to the LSB's accreditation and complaints rules and procedures. The fact that all participants in them will be regulated via a professional body, already provides significant protections.

55. APIL feels with these additional protections in place, that it may be wise to introduce LDPs prior to the wider introduction of MDPs. If LDPs can be shown to succeed in both offering a cost-effective and quality service to consumers, without in any way impinging on the independence of the legal service providers, there would a stronger basis on which to proceed with MDPs.

APPENDIX

APIL CONSUMER CHARTER

- APIL members will put your interests first
- APIL members will provide clear, impartial, honest advice about your case
- APIL members will tell you if you will have to pay anything to pursue your case and, if so, how much
- APIL members will keep your costs to a minimum
- APIL members will explain your legal position in plain English
- APIL members who feel unable to deal with your case will refer you to another APIL member who is more suitably qualified
- APIL members will keep you updated about all aspects of your case
- APIL members will consider other appropriate remedies as well as financial ones
- APIL members will not cold call
- APIL members will only publish advertisements which are accurate and truthful

Your welfare is our concern

CODE OF CONDUCT

Introduction

The Association of Personal Injury Lawyers (APIL) was established in April 1990

by a group of barristers and solicitors working for plaintiffs, dedicated to the improvement of services provided for victims of accidents and disease.

APIL's head office, based in Nottingham, is staffed by dedicated full-time staff under the direction of a Chief Executive, reporting to APIL's elected Officers.

Members of APIL subscribe to a code of conduct and support APIL's main objectives.

Membership of APIL is on the basis of a commitment to APIL's objectives and this code. Membership is not a guarantee of excellence or specialisation.

APIL's objectives are:

- To promote full and just compensation for all types of personal injury
- To promote and develop expertise in the practice of personal injury law
- To promote wider redress for personal injury in the legal system
- To campaign for improvement in personal injury law
- To promote safety and alert the public to hazards wherever they arise
- To promote a communication network for members

APIL members recognise the need to:

- Provide a professional service
- Keep their clients regularly informed
- Proceed expeditiously with all personal injury claims
- Keep themselves informed, educated and up to date with current law and procedure
- Share information with other APIL members
- Give independent advice
- Maximise the amount of compensation receivable in the hands of the client
- Ensure that the client is fully aware of, and fully and professionally advised, on all costs issues, including legal aid.
- Ensure that clients have the opportunity to receive advice on the investment and/or use of damages.

Code of Conduct

1. APIL members will act in the best interests of the client
2. APIL members shall at all times behave and act in a manner which will uphold the standing and good reputation of plaintiff personal injury lawyers and APIL.

3. No APIL member shall pursue a frivolous claim issue or position. However, no APIL member should refrain from taking or pursuing any claim issue or position that is believed to have merit.
4. No APIL member shall make excessive or unnecessary monetary charges to the client.
5. No APIL member shall personally or through an agent make representations of experience or specialist skills which they do not possess.
6. No APIL member shall knowingly make any statement, whether in publicity material to a prospective client, an existing client, or otherwise which may give the client false expectations.
7. No APIL member shall undertake false deceptive or misleading advertising.
8. APIL's logo shall not be used by any APIL member, either personally or through their firm, for advertising or marketing purposes. Members are however able to identify their individual APIL membership.
9. No APIL member shall personally, or through a representative, directly contact a potential client except through permitted advertising, where there has been no request for such contact. "Permitted advertising" is defined as "advertising which complies with the Code of Practice of the Advertising Standards Authority and with the Rules of the member's relevant legal professional body".
10. Save where permitted by rules of the member's relevant legal professional body, no APIL member shall pay or receive a fee for the introduction of clients.
11. No APIL member shall knowingly accept a referral from a person, whether an APIL member or not, who obtained the representation by means contrary to this code.

Enforcement of Code of Conduct

1. Details if any alleged breach of Code of Conduct to be notified to APIL's Secretary.
2. If the Secretary is of the opinion that there is a prima facie breach of the Code but that such breach is not grave or persistent, the Secretary will communicate with the member or members concerned to attempt to resolve the matter complained of.
3. If the Secretary is of the view that the prima facie breach is grave or persistent, or if a complaint dealt with under paragraph 2 above cannot be satisfactorily resolved, the Secretary and 3 other EC members shall investigate the alleged breach, giving the member proper opportunity to answer the complaint, and ensuring the member is aware of the relevant

Articles of Association relating to termination or suspension of membership.

4. The three member EC panel will report to the EC who will decide on the issue(s) and whether membership should be suspended or terminated. In the event that pending the opinion of the Executive Committee on the issue of breach it forms the view that it is appropriate to do so, the Executive Committee may suspend the membership of any member pending such opinion. The decision and reasons for it will be notified in writing.
5. An appeal against the EC's decision must be made to the Secretary in writing within 21 days of notification to the member of the EC's decision.
6. An appeal will be dealt with by an Appeals Panel consisting of an independent legally qualified chair (who shall not be or have been an APIL member), appointed by the EC, and two other panel members who shall be appointed by the chair, one of whom shall be a past officer of APIL, and the other of whom shall be a member of APIL who is not currently, nor ever has been a member of the EC.

Revised October 2000