



# Review of the levy rules

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Consultation on the proposed amendments to the levy rules  
made under sections 173-174 of the Legal Services Act 2007

**18 December 2013**

This consultation will close on 18 February 2014

**This consultation paper will be of interest to:**

Approved regulators

Legal representative bodies

Members of the legal profession

Accountancy bodies

Potential new entrants to legal services regulation

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## Executive summary

1. Following a review of the current levy rules there are four areas where the Legal Services Board is proposing to make amendments:

### *Legal Services Board (LSB) leviable expenditure*

- a minimum contribution of £3,000 for all approved regulators who have approved regulatory arrangements (paragraph 23)

### *Office for Legal Complaints (OLC) leviable expenditure*

- to use a three-year reference period initially ending 31 March 2014 to calculate the average number of complaints and the end date being rolled forward one year for each levy period. (paragraph 31)
  - using actual data captured by the OLC to determine the levy payable by each approved regulator instead of historic complaint information to recoup their leviable expenditure – currently the costs of the Legal Ombudsman (paragraph 32)
  - a minimum contribution of £5,000 for OLC leviable expenditure for all approved regulators who have approved regulatory arrangements (paragraph 36)
2. The LSB is not proposing to make any additional changes to the rules at this time except to correct two drafting points following feedback from the Joint Committee on Statutory Instruments. (paragraph 40)
  3. Approved regulators will pay their contribution to the levy under the current rules, which will remain in place until 31 March 2014. The amended levy rules, if approved, will apply for the 2014/15 collection year and will remain in force unless subsequently amended.

## Introduction

4. The LSB is required by Part 7 of the Legal Services Act 2007 (specifically sections 173-174) to meet all its, and the OLC's<sup>1</sup> leviable expenditure through a levy on the approved regulators. The LSB has made rules for all leviable expenditure, as defined in the Act, is taking this opportunity to review these rules to determine whether they are still appropriate and in line with the '*better regulation principles*'- (**transparent, accountable, proportionate, consistent, targeted**).
5. The current rules are enshrined in legislation and can be found at: <http://www.legislation.gov.uk/ukxi/2010/2911/resources>
6. Section 174(4) of Part 7 of the Act allows for different parts of the levy to be payable at different rates and, consistent with the current rules, the LSB proposes to continue this distinction so that the methodology for recouping its costs will be different to the one used to recover the leviable expenditure of the OLC.
7. When the LSB made the current rules at the end of 2010 it undertook to review the rules in 2013/14. This consultation is as a result of this review and discussion with representatives from the majority of current approved regulators.
8. The current levy rules will remain in operation to the end of this levy year, i.e. to 31 March 2014. The proposals contained in this document, if approved, will be effective from 1 April 2014 and be in force until updated.
9. A draft statutory instrument detailing the proposed changes in the rules is included in **Annex A**.
10. The LSB has discussed its broad proposals with representatives from the majority of current approved regulators, who have approved regulatory arrangements in place, and to date no one has dissented from these changes. However this document represents an opportunity for approved regulators to consider the proposals afresh together with illustrative examples of how changes to the existing methodology may affect them, if at all.
11. This consultation exclusively concerns the methodology for recouping leviable expenditure of the LSB and the OLC from leviable bodies<sup>2</sup>.

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<sup>1</sup> Section 115(3) of the Act provides for the Office for Legal Complaints to operate its ombudsman scheme under a different name. The ombudsman scheme is referred to as 'Legal Ombudsman' and is used throughout this document for the purposes of this consultation.

<sup>2</sup> Section 173(5)(b) of the Act also includes as a leviable body 'the person designated under section 51(1) of the Compensation Act 2006 (c.29) (the Regulator in relation to claims management services). If a person is so designated then the levy rules and apportionment will be subject to a further amendment.

## Rules for recouping the expenditure of the Legal Services Board

12. The current rules apportion these costs on the basis of the number of authorised persons regulated by each approved regulator.
13. In 2010 there was some discussion as to whether the LSB's costs could be apportioned on the basis of 'risk'.
  - The Law Society stated that *'we do not think there is a practical basis on which a risk based approach could be implemented at present. It is impossible to find an objective measure for the damage which would be done if particular Approved Regulators took actions which were inappropriate in terms of the Act'*
  - The Master of the Faculties was concerned about the advent of *alternative business structures (ABS) and licensing authorities saying 'authorised persons who seek to gain from ABS should bear the burden of paying for their regulation. These monies should be recouped from Licensing Authorities through their licensing fees. The LSB should determine what areas of their work relate only to ABS and recoup those costs from the Licensing Authorities only.'*
14. At this stage (more than two years after the granting of the first licensing authority application), the LSB does not consider that it spends any significant time on ABS-only issues to the detriment of general regulatory oversight of approved regulators.
15. Approved regulators have been very clear that in budgeting for LSB levies they require certainty of these costs and at the earliest stage possible.
16. The LSB has previously stated that it would not discount looking at other approaches in this review, as long as the benefits of a more sophisticated approach are not outweighed by disproportionate costs to approved regulators or the LSB of administering that approach. To date we have not identified an alternative approach that meets this criterion.
17. Discussions with representatives of approved regulators have demonstrated that they agree that current methodology meets this requirement.
18. As the LSB has reduced its costs since its inception in 2009, and the total numbers of practitioners has gradually increased over this period the approximate amount attributable to each authorised person for LSB leviable expenditure has reduced from in the region of £34 to £25.31 for 2013/14.

19. **Question 1- Do respondents agree that a ‘do nothing approach’ (that is not to change the current methodology for recouping the expenditure of the LSB) is the correct option at this time?**
20. There were some understandable concerns that the current rules do not place an obligation on newly approved regulators to contribute to the LSB’s costs in their first year of operation. Applicants to become a new regulator have to pay a fee of £22,000 and this fee is offset against the general amount recouped from all regulators.
21. The LSB has looked at this issue again to determine whether all approved regulators should pay a minimum fee, eg £3,000 irrespective of whether they have any authorised persons. This would apply to the two existing accountancy bodies, Institute of Chartered Accountants of Scotland (ICAS) and Association of Chartered Certified Accountants (ACCA). However this is not consistent with the better regulation principles as it is not proportionate. The LSB currently has very little direct interaction with these two regulators<sup>3</sup>, and they do not have any authorised persons.
22. The LSB meets a wide range of organisations, which are not currently subject to regulation or part of the legal services regulatory community but who, in some cases, have aspirations of being so.
23. If however a new regulator (or ICAS or ACCA) has regulatory arrangements approved, at any stage within a year (1 April to 31 March), the LSB deems that it would be correct and proportionate to levy a fixed fee for the first year e.g. £3,000, which would also cover them for their first 120 authorised persons.
24. **Question 2- Do respondents agree that levying a fixed fee for new (or ICAS and ACCA) who have regulatory arrangements approved during a year (1 April to 31 March) is a proportionate approach?**

## **Rules for recouping the leviable expenditure of the Office for Legal Complaints**

25. The LSB has always acknowledged that using a methodology based on a fixed historical period for calculating the levy for the Legal Ombudsman’s costs (average number of complaints per year based on a three-year period ending 31 December 2009) was not ideal. However this served as an adequate proxy until the Legal Ombudsman had been operating for a long enough period to be able to base the

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<sup>3</sup> All approved regulators who had been designated by the Ministry of Justice prior to the Act coming into force continued to have the status of an approved regulator by the Act.

charges on actual data. This was one of the main reasons to committing to a review of the levy rules in 2013/14.

26. Currently the OLC is able to provide data to all approved regulators on the number of complaints that have been accepted by the Legal Ombudsman since its inception on 6 October 2010.

27. The table below details the current amounts payable by each approved regulator for 2013/14, as already advised.

**Table 1 for illustrative purposes only**

Approved regulator	2013/14 Levy	
	Average no. of complaints (3 year period ending 31/12/2009)	OLC Estimate based on Legal Ombudsman budget (net of case fee income)
		£
The Law Society	13,311	14,881,828
General Council of the Bar	421	470,682
Chartered Institute of Legal Executives	8	8,944
Council for Licensed Conveyancers	194	216,894
Intellectual Property Regulation Board	8	8,944
Faculty Office	5	5,590
Costs Lawyers Standards Board	1	1,118
<b>Total</b>	<b>13,948</b>	<b>15,594,000</b>

28. Table 2 on the next page provides an illustrative analysis of the 14/15 estimated levy based on the average number of actual complaints for the three year period ending 30 September 2013.

29. An average of three years is proposed so as to smooth out any sudden and one-off peaks in complaints. While this would be insignificant for the approved regulators with a high volume of complaints it could no doubt cause funding issues for the smaller approved regulators.

30. Using the actual number of complaints accepted by the Legal Ombudsman is fairer and targeted.

31. The LSB is proposing that the referencing period for the three years should initially be '*the three years ending 31 March 2014*' and that this should be automatically rolled forward each year. This would mean using the most up to date information available when estimates were given to approved regulators of their likely



contributions around June of each year in order to determine the amount needed to be included in the practising certificate fee.

**Table 2 for illustrative purposes only (using latest data available)**

Approved regulator	2014/15 Levy	
	Average no. of complaints (3 year period ending 30/09/2013)	OLC Estimate based on Legal Ombudsman budget (net of case fee income)
		£
The Law Society	7,739.33	12,455,32
General Council of the Bar	279.33	449,541
Chartered Institute of Legal Executives	0	0
Council for Licensed Conveyancers	139.33	224,231
Intellectual Property Regulation Board	10.33	16,625
Faculty Office	2.33	3,750
Costs Lawyers Standards Board	0.33	531
<b>Total</b>	<b>8,171</b>	<b>13,150,000</b>

**32. Question 3 - Do respondents agree that using an average of complaints for a three year period, initially ending 31 March 2014, is the most appropriate methodology for recouping the leviable expenditure of the OLC?**

33. There were some concerns that the current rules do not place any obligation on newly approved regulators to contribute to the Legal Ombudsman's costs as by definition they had no 'complaints prior to 31 December 2009' to count.

34. The LSB, in conjunction with the Legal Ombudsman, has looked at this issue again to determine whether all approved regulators should pay a minimum contribution to the Legal Ombudsman's costs on the basis that the Legal Ombudsman has been set up for the benefit of all approved regulators- irrespective of whether they actually have any complaints registered against them

35. If this were to be the case this would also apply to the two existing accountancy bodies, ICAS and ACCA, who are approved regulators.

36. The LSB is proposing that all existing and new approved regulators, who have regulatory arrangements approved (and so are capable of authorising individuals to undertake one or more reserved legal activities), pay a fixed fee of £5,000 each year and that this would cover the first three complaints each year.

37. The effect of this proposal is that an amount equivalent to £5,000 multiplied by the number of approved regulators who have approved regulatory arrangements would be deducted from the total amount payable by the remaining approved regulators who had an average number of three or less complaints. Had this methodology been in place for the 2013/14 levy year then the contributions for each approved regulator is illustrated in Table 3.

38. The LSB is aware that a minimum amount would increase the levy for the smallest existing approved regulator, Costs Lawyers Standards Board (CLSB) but doesn't consider this level of fee a barrier to new entrants.

39. **Question 4 - Do respondents agree that all approved regulators who have regulatory arrangements approved, should pay a minimum contribution of £5,000 towards the costs of the Legal Ombudsman and the balance would then be apportioned as in question 3?**

Table 3- For illustrative purposes only (using latest data available)

Approved regulator	2014/15 Levy	
	Average no. of complaints (3 year period ending 30/09/2013)	OLC Estimate based on Legal Ombudsman budget (net of case fee income)
		£
The Law Society	7,736.33	12,472,873
General Council of the Bar	276.33	445,512
Chartered Institute of Legal Executives	0	5,000
Council for Licensed Conveyancers	136.33	219,798
Intellectual Property Regulation Board	7.33	11,818
Faculty Office	0	5,000
Costs Lawyers Standards Board	0	5,000
<b>Total</b>	<b>8,171</b>	<b>13,150,000</b>

### Other proposed changes to the levy rules

40. The LSB is not proposing to make any additional changes to the rules at this time except to correct two drafting points following feedback from the Joint Committee on Statutory Instruments.

- Amendment to rule 3
- Amendment to rule 8

## Next steps

### 41. How to respond:

- The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation. The LSB will also share the responses received and that are relevant to the levy for the running of the Ombudsman scheme with the OLC.
- The consultation period ends at 5pm on **18 February 2014**. In accordance with Section 205(3) of the Act, you are therefore given notice that any representation about the proposals contained in the consultation paper must be received prior to the end of this period.
- There is a preference to receive responses electronically (in Microsoft word format), but hard copy responses are also welcome. Responses should be sent to:

**Post:**

Michael Mackay  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

**Email:** [Consultations@legalservicesboard.org.uk](mailto:Consultations@legalservicesboard.org.uk)

**Fax:** 020 7271 0051

42. Stakeholder organisations are invited to contact the LSB to arrange a meeting to discuss their views during the consultation cycle, if they wish. Please send all requests to [Consultationslegalservicesboard.org.uk](http://Consultationslegalservicesboard.org.uk)

43. Draft schedule for development and implementation after the consultation has closed

- |  |                             |
|--|-----------------------------|
| • Finalise rules and decision document   | 19 February to 4 March 2014 |
| • Final consistency check by MoJ lawyers | 4 March to 21 March         |
| • Board considers rules and signs SI     | 26 March                    |
| • Order submitted to Minister            | 27 March                    |

## Complaints

44. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

Or by e-mail to: [michelle.jacobs@legalservicesboard.org.uk](mailto:michelle.jacobs@legalservicesboard.org.uk)

## Glossary of terms

<b>ACCA</b>	Association of Chartered Certified Accountants. Approved regulator in relation to reserved probate activities
<b>AR or approved regulator</b>	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
<b>Authorised Person</b>	A person authorised to carry out a reserved legal activity
<b>BSB</b>	Bar Standards Board – the independent Regulatory Arm of the Bar Council
<b>BAR</b>	The General Council of the Bar – the representative body for Barristers
<b>CILEx</b>	Chartered Institute of Legal Executives - representative body for Legal Executives
<b>CLC</b>	Council for Licensed Conveyancers – the regulator for Licensed Conveyancers
<b>CIPA</b>	Chartered Institute of Patent Attorneys- representative body for Patent Attorneys
<b>Consultation</b>	The process of collecting feedback and opinion on a policy proposal
<b>Consumer Panel</b>	The panel of persons established and maintained by the Board in accordance with Section 8 of the LSA (2007) to provide independent advice to the Legal Services Board about the interests of users of legal services
<b>CLSB</b>	Costs Lawyers Standards Board- regulates costs lawyers under delegated authority of the Association of Costs Lawyers
<b>Faculty Office</b>	The approved regulator for Notaries
<b>ICAEW</b>	Institute of Chartered Accountants of England and Wales – the representative body for Chartered Accountants in England and Wales
<b>ICAS</b>	Institute of Chartered Accountants of Scotland – the approved regulator in relation to reserved probate activities
<b>Impact Assessment</b>	An assessment of the likely impact of a policy on cost, benefits, risks and the likely or actual effect on people in respect to diversity
<b>ITMA</b>	Institute of Trade Mark Attorneys – representative body for Trade Mark Attorneys
<b>IPREG</b>	Intellectual Property Regulation Board – undertakes the regulation of Patent and Trade Mark Attorneys
<b>LSB or the Board</b>	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales

<b>Legal Ombudsman</b>	Legal Ombudsman - The single organisation for all consumer legal complaints
<b>Levy</b>	The LSB is required by the Legal Services Act (2007) to meet all its, and the Legal Ombudsman's costs through a levy on the Approved Regulators.
<b>LSA or the Act</b>	Legal Services Act 2007
<b>MoU</b>	Memorandum of Understanding - A document describing an agreement between parties
<b>OLC</b>	Office for Legal Complaints. NPDB established by the Legal Services Act to establish an independent Legal Ombudsman Service
<b>Principles of Better Regulation</b>	The five principles of better regulation, being proportional, accountable, consistent, transparent and targeted
<b>Regulatory Objectives</b>	There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007): <ul style="list-style-type: none"> <li>• protecting and promoting the public interest</li> <li>• supporting the constitutional principle of the rule of law improving access to justice</li> <li>• protecting and promoting the interests of consumers promoting competition in the provision of services in the legal sector</li> <li>• encouraging an independent, strong, diverse and effective legal profession</li> <li>• increasing public understanding of citizens legal rights and duties</li> <li>• promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.</li> </ul>
<b>Regulatory Rules</b>	Set out the regulatory arrangements that Approved Regulators must comply with in order to be designated as approved regulators for specific reserved activity.
<b>Reserved Legal Activity</b>	Legal services within the scope of regulation by the Approved Regulators
<b>SRA</b>	Solicitors Regulation Authority - Independent regulatory body of the Law Society
<b>Statutory Instrument</b>	A form of legislation which allow the provisions of an Act of Parliament to be brought into force or altered without Parliament having to pass a new Act.

## **Index of annexes**

### **Annex A: Draft Statutory Instrument**

1. Section 205(2) of the Act requires the LSB to publish a draft copy of the rules. Concurrent to the consultation process, the LSB will consult the Ministry of Justice to ensure that the draft rules are consistent with relevant published guidance. Page 1
2. Consistent with section 205(5) of the Act, the LSB proposes that it will only re-consult on the affected policy proposal(s) and the relevant part(s) of the draft rules draft SI if there are material changes to the draft rules as a result of consultation responses.

### **Annex B: Summary of consultation questions**

## STATUTORY INSTRUMENTS

201[ ] No. [ ]

**LEGAL SERVICES, ENGLAND AND WALES****The Legal Services Act 2007 (Levy) (No.2) (Amendment) Rules 201[ ]***Made* - - - - - \*\*\**Laid before Parliament* \*\*\**Coming into force* - - - \*\*\*

The Legal Services Board with the consent of the Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 173, 174 and 204(2), (3) and (4)(b) of the Legal Services Act 2007<sup>(a)</sup>.

In accordance with section 173(3) of that Act, the Legal Services Board has satisfied itself that the apportionment of the levy as between different leviable bodies is in accordance with fair principles.

The Legal Services Board has complied with the consultation requirements in section 205 of that Act.

**Citation, commencement and interpretation**

**1.** These Rules may be cited as the Legal Services Act 2007 (Levy) (No.2) (Amendment) Rules 201[ ] and shall come into force on [ ].

**2.** In these Rules, a reference to a rule by number alone means the rule so numbered in the Legal Services Act 2007 (Levy) (No.2) Rules 2010<sup>(b)</sup>.

**Amendments to the Legal Services Act 2007 (Levy) (No.2) Rules 2010**

**3.** In rule 2 (Levy imposed under these Rules)—

(a) in paragraph (3)(a) after “estimated expenditure” insert “so far as actual expenditure figures are not available to the Board”

(b) after paragraph (5), insert—

“(6) The levy is not to be imposed on a leviable body to whom this paragraph applies until its regulatory arrangements in respect of reserved legal activities are approved by the Board under Part 3 of Schedule 4 to the 2007 Act.

(7) Paragraph (6) applies to—

(a) the Institute of Chartered Accountants of Scotland; and

(b) the Association of Chartered Certified Accountants.

**4.** In rule 3 (Determining the amount of the levy for each leviable body)—

(a) in paragraph (2) after “becomes a leviable body” insert “or a leviable body to whom rule 2(6) applies has its regulatory arrangements approved by the Board under Part 3 of Schedule 4 to the 2007 Act”; and

<sup>(a)</sup> 2007 c. 29.

<sup>(b)</sup> S.I. 2010/2911.



(b) in paragraph (2)(a), for “no amount” substitute “£3000”.

**5. In rule 4 (Apportionment of leviable Board expenditure)—**

(a) in paragraph (1), for “(5)” substitute “(6)”; and

(b) after paragraph (5), insert—

“(6) The total amount of leviable Board expenditure to be used in applying the calculation described in paragraph (1) is to be reduced by any amount payable by a leviable body in respect of an initial period as described in rule 3(2)(a).”.

**6. In rule 5 (Apportionment of leviable OLC expenditure)—**

(a) in paragraph (1), after “is” insert “£5000 plus”;

(b) for paragraph (2), substitute—

“(2) For these purposes—

(a) subject to sub-paragraph (c), the relevant proportion is the number of service complaints in respect of the leviable body accepted in the course of the reference period by the OLC, as a proportion of the total number of service complaints in respect of all leviable bodies accepted in the course of that period by the OLC;

(b) the reference period is the three year period ending on 31st March prior to the 12 month period in respect of which the levy is imposed; and

(c) for the purposes of sub-paragraph (a), the number of service complaints in respect of the leviable body accepted in the course of the reference period by the OLC shall be reduced by three.”;

(c) for paragraph (6), substitute—

“(6) In this rule—

“service complaint” means a complaint which is within the jurisdiction of the ombudsman scheme as provided for in Part 6 of the 2007 Act.”.

**7. In rule 6 (Duty to provide information required to calculate the levy)—**

(a) for paragraph (2)(b), substitute—

“(b) for the purposes of rule 5, a statement of the number of service complaints accepted in the course of the reference period by the OLC (and for this purpose “reference period” has the meaning given in rule 5).”; and

(b) delete paragraph (5).

**8. In rule 8 (Interest payable on late payment), delete “entitled”.**

Made by the Legal Services Board at its meeting on [date]

I consent

Signed by authority of the Lord Chancellor

Date

*Name*  
*[Minister]*  
Ministry of Justice

## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These rules amend the Legal Services Act 2007 (Levy) (No.2) Rules 2010 (S.I. 2010/2911) made under sections 173 and 174 of the Legal Services Act 2007 (“the Act”) which provide for the imposition of a levy on certain leviable bodies by the Legal Services Board (“the Board”).

Rule 2 is amended to specify when the levy will be imposed on the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants. Rule 2 is also amended to specify that estimated expenditure can only be used by the Board in determining leviable expenditure when actual expenditure figures are not available.

Rule 3 is amended to make a fixed-rate levy of £3000 payable to the Board in any initial period, and to specify when the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants are to pay that sum.

Rule 4 is amended to reduce leviable Board expenditure by any amount payable in respect of an initial period.

Rules 5 and 6 are amended such that the leviable OLC expenditure payable by each leviable body comprises a fixed-rate levy of £5000 plus an amount apportioned according to the number of complaints in respect of that leviable body accepted during the previous three years by the Legal Ombudsman.

Rule 8 is amended to clarify that interest must be charged in the event of any late payment.

Before making these rules, and in accordance with the 2007 Act, the Legal Services Board complied with the consultation requirements and satisfied itself that (as amended by these rules) the apportionment of the levy as between different leviable bodies would be in accordance with fair principles.

**Summary of Consultation Questions:**

**Question 1-** Do respondents agree that a 'do nothing approach' (that is not to change the current methodology for recouping the expenditure of the LSB) is the correct option at this time?

**Question 2-** Do respondents agree that levying a fixed fee for new (or ICAS and ACCA) who have regulatory arrangements approved during a year (1 April to 31 March) is a proportionate approach?

**Question 3 -** Do respondents agree that using an average of complaints for a three year period, initially ending 31 March 2014, is the most appropriate methodology for recouping the leviable expenditure of the OLC?

**Question 4 -** Do respondents agree that all approved regulators who have regulatory arrangements approved, should pay a minimum contribution of £5,000 towards the costs of the Legal Ombudsman and the balance would then be apportioned as in question 3?