

THE LEVY : FUNDING LEGAL SERVICES REGULATION

**A RESPONSE BY THE INSTITUTE OF LEGAL EXECUTIVES
AND ILEX PROFESSIONAL STANDARDS LIMITED**

**THE CONSULTATION ON THE PROPOSED RULES
TO BE MADE UNDER SECTIONS 173 AND 174
OF THE LEGAL SERVICES ACT 2007**

DATED: 26.06.2009

INTRODUCTION

1. This report has been prepared by a working party of the Institute of Legal Executives (ILEX) consisting of the President, Office Holders and other Council members. The Board of ILEX Professional Standards Limited (IPS) has considered the paper and, except for a small number of issues where the input will be identified, agrees that the issue of the levy is primarily one for ILEX the Approved Regulator.
2. ILEX and IPS are pleased to have the opportunity to consider the Legal Services Board (LSB) approach to the levy for the cost of implementation of the LSB and the Office of Legal Complaints (OLC). We appreciate the tight timescale that the LSB has in which to deal with the levy, which tight timescale has no doubt influenced its approach. Nonetheless, ILEX is disappointed that in its approach to the levy the LSB has taken the easy option of a per head allocation. ILEX accepts that the approach of the LSB meets the LSB's definition of transparency, accountability, proportionality, consistency and targeting. There are, of course, other approaches which would meet the LSB definition. It seems to ILEX that these are not being developed at this time because of a lack of time to develop different, and in our view more appropriate and fair, approaches.
3. 7,300 Legal Executive Commissioners for Oaths, in employed practice, many on an average or below average salary, are being expected to pay the same per head towards the implementation costs of the LSB as those running their own businesses, and those with full rights in all reserved areas of practice, and overwhelmingly earning above average salaries.
4. The suggested £32.86 per head levy is equivalent to 16.43% rise of the practising certificate fees for Legal Executives, but only a 3.3% rise for solicitors.
5. Recent research indicates that 40% of Legal Executives pay their own practising certificate fee. The vast majority of solicitors practising certificate fees are paid for by their employer who can offset these expenses against business tax. Most Legal Executives have no opportunity for offsetting their costs against business tax or of passing it directly onto the consumer, another avenue open to other practitioners. ILEX is also aware that there are significant numbers of employers now not paying practising certificate fees for anyone employed in the firm except for solicitors.

Question 1

Can respondents see any areas where a definition of 'Fair Principles' could be improved?

6. The definition of proportionality should be extended to encompass the effect that the levy will have on the regulated community. IPS strongly recommends that the LSB look at the diversity impact of their proposals;

costs invariably raise equality and diversity issues and high fees are likely to weigh more heavily on sole practitioners/small firms.

Question 2

Are respondents content that the detailed mechanisms for the collection of the levy are detailed in individual Memoranda of Understanding?

7. ILEX agrees that the Memoranda of Understanding between the Approved Regulators and the LSB is the appropriate place for setting out the detailed mechanisms for the collection of the levy.

Question 3

A timetable for the first year

Question 4

Are there other options in terms of timetabling?

8. ILEX has no disagreement with LSB regarding the proposal for recoupment of the levy over a three year period, with 70% repayable in year one, 20% in year two and 10% in year three. However, we would wish to be assured that the Treasury will not be imposing a cost of capital recharge at 3.5% on the average balance remaining. Over the many years of discussion with the Ministry of Justice (MoJ), who themselves proposed a three year timetable for recoupment, no mention was ever made of a capital recharge.
9. The timetable for collection in year one should not pose particular difficulty for ILEX. The future year's timetable fits reasonably well with ILEX's annual financial year and budget timetable. The important date for ILEX is May. This is because we would normally give information to the profession and their employers in July about prospective subscription and practising certificate fees. As we try to align practising certificate and other fees with a properly prepared budget against the business plan, it is essential that we have a clear idea, obviously subject to some amendment, by May each year.

Question 5

Timetable for implementation

10. We have not noticed a mechanism for review of expenditure as against the levy applied. We raise the question of how the Approved Regulators can be satisfied that the LSB actually spent what they proposed to spend, and whether there are mechanisms for recoupment from the LSB?

Question 6

Do respondents agree that there are no suitable metrics for the assessment of regulatory risk to enable it to be used as an apportionment to all LSB costs in the short term?

11.No, ILEX does not agree. Commonsense alone would demonstrate that ILEX members are a very low risk in comparison to solicitors and even the Bar. Our members are employees working within structured environments which are almost invariably subject to stringent internal regulation and risk management mechanisms. Their behaviour has demonstrably given rise to very few complaints (a risk measure utilised in relation to the position of fees for the implementation of the OLC). Information can also be obtained from insurance companies who provide indemnity insurance to the professions. ILEX would urge the LSB to begin to identify and collect risk assessment data from the outset so that over time, a suitable method for measuring relative risk can be developed, introducing this into the formula for apportioning the level as soon as its robustness can be demonstrated.

Question 7

Do respondents agree there are no suitable metrics for the assessment of volume activity to enable it to be used as a apportionment to all LSB costs to March 2010?

12.ILEX would not urge assessment of volume activity to be used as a tool to apportion LSB costs to March 2010, unless it can be clearly demonstrated, for example by a diary of events and meetings, that one or more Approved Regulators has had a disproportionate access to the LSB, or has taken up a disproportionate amount of the LSB's time through additional meetings and consultations, whether initiated by the LSB or by the individual Approved Regulator. Publication of such information to all Approved Regulators would be useful.

Question 8

Apportionment of costs based on number of authorised person and whether first April was a suitable date at which numbers of authorised persons are defined?

13.1 April is a suitable date at which to assess numbers of authorised Legal Executives. Our practising certificate notices are sent to Legal Executives in November each year, payment being due by January. Naturally some individuals pay either instalments by direct debit, or enter into discussion with us so that their fees are not payable until later in the year.

Question 9

Are there options other than those canvassed in this paper for the recovery of implementation costs that should be further explored?

14. As stated previously, ILEX believes that the effect of the levy on different parts of the legal profession and on the membership of individual Approved Regulators should form part of the consideration.

Question 10

The apportionment based on numbers of authorised persons in relation to OLC costs does not fit the fairness principles?

15. ILEX agrees with the approach to the implementation costs of the OLC. 40 (on average) complaints per year can be considered de minimis; or in the alternative will give rise once again to a disproportionate contribution by those whose complaints record is exemplary.

16. ILEX is one of the strongest supporters of the establishment of the OLC. However, given ILEX's, and ILEX members', exemplary complaints record, there is no justification for imposing a £500,000 cost against ILEX. If a per-capita formula was used, members would, together with the levy for the LSB, find their practising certificates fee raised by 50%. This would not be proportionate, even within the definition of fair principle used by the LSB.

17. The picture is even more stark when it is realised that the only complaints being counted are service complaints and not professional conduct complaints. Only some three or four of the complaints handled by ILEX each year are service complaints. We expect this situation to continue for some years until Legal Executives are more clearly involved in the ownership and leadership of Alternative Business Structures (ABSs).

Question 11

Views on the suggested approach for collection of implementation costs for OLC based on the number of complaints

Question 12

Are there options other than those canvassed in this paper which should be explored further for the apportioning of the implement costs of the OLC?

Question 13

We would welcome views on possible different approaches that might be adopted for the medium term

Question 14

Are respondents content with the proposed longer term timetable for collection?

IMPACT ASSESSMENT

18. ILEX has some concern regarding the arguments in paragraphs 10.9 and 10.10. The LSB appears to be asking for evidence that members will move out of the regulated sector if the cost as proposed by the LSB is levied. This really appears to be asking for evidence before the event.
19. We are not aware of a significant reduction in renewal of membership by Legal Executives for the year 2009. We do not know whether this is because the full force of the recession had not hit law firms and Legal Executives when the subscription demands arrived in early November 2008. We are aware of a small number of individuals who have been made redundant and who are struggling financially, and who may not be in a position to renew their practising certificate at the end of 2009.