

The Law Society response to questions

General

Question 1 – Can respondents see any areas where our definition of “fair principles” could be improved?

We agree with the Legal Services Board’s definition of “fair principles”.

Question 2 – Are respondents content that the detailed mechanisms for the collection of the levy are detailed in individual Memoranda of Understanding between the Approved Regulators and the LSB? What might such memoranda most usefully contain?

We agree that detailed mechanisms for the collection of the Levy should be included in individual Memoranda of Understanding. The key issue to be covered in such memoranda will be the need to ensure that the timing of decisions about the levy are aligned with decisions about each approved regulator’s timetable for setting and collecting Practising Fees.

Timetabling

Question 3 – We would welcome comments from Approved Regulators on whether the timetable we propose is achievable for the first year?

As the Law Society has made clear in separate correspondence, the timing for decisions on the initial levy is not aligned with decisions about the Law Society Practising Fees. Decisions about Practising Fees need to be taken in July in order to ensure that SRA can operate the collection mechanism effectively. In the absence of a decision about the phasing of the levy for implementation costs, the Law Society Council will be invited to approve Practising Fees which assume that the Ministerial commitment will be adhered to, and that only one third of the implementation cost will be collected in the first year.

Question 4 – Are there other options in terms of timetabling we should be considering?

We have no other options to propose at present.

Question 5 – We would welcome views on what timetable the costs should be recovered. We propose that the costs should be split 70% in the first year. 20% in the second year and 10% in the third year. Do respondents agree with this approach to cost recovery of LSB and OLC implementation costs?

The Law Society strongly disagrees with the Legal Services Board’s approach to the time table on which implementation costs should be recovered. As explained in paragraphs 12 to 15 of our response, we believe that no more than one third of the total

levy for implementation costs should be recovered in the first year, in accordance with the Ministerial commitment.

LSB Levy for implementation and running costs until the end of March 2010

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 tool for LSB costs in the short-term?

The Law Society agrees there are no suitable metrics for the assessment of regulatory risk at present.

Question 7 – Do respondents agree that there are no suitable metrics for the assessment of volume of activity to enable it to be used as an apportionment tool for LSB costs in the short-term?

We agree there are no suitable metrics for the assessment of volume of activity for LSB costs to March 2010.

Question 8 – We would welcome views on the apportionment of costs based on number of authorised persons and whether 1 April is a suitable date at which numbers of authorised persons are defined?

We regard it as sensible to apportion the cost of implementing LSB on the basis of the number of authorised persons regulated by each approved regulator. The Law Society recognises that to divide the costs equally between the approved regulators would not be fair. Accordingly, it is difficult to think of any practical alternatives to the LSB's proposed approach. We agree that April 1st is a suitable date on which to base the allocation.

Question 9 – Are there options other than those canvassed in this paper for the recovery of implementation costs which should be explored further?

The Law Society has no other option to suggest.

Question 10 – Do respondents agree that apportionment based on numbers of authorised persons in relation to OLC costs does not fit the fairness principles set out in Chapter 3?

Question 11 – We would welcome views on the suggested approach for collection of implementation costs for the 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 implementation costs for the OLC?

The Law Society thinks there is an argument for apportionment of the implementation costs of OLC to be based on the number of authorised persons, since the number of authorised person is a reasonable proxy for liability to incur consumer complaints.

Against that the Law Society acknowledges that recent experience suggests that in practice, significantly more complaints arise from some authorised regulators than from

others. In part this is because complaints arising about legal executives, for example, will be far more likely to be recorded as complaints against solicitors firms than as complaints against ILEX regulated persons, because most legal executives work in solicitors firms. In principle, there would be a good argument for teasing out which complaints are attributable to the work of which authorised person, rather than attributing all those arising in a solicitors firm to solicitors. However, we recognise that it would be impossible to do that with any precision, and that the costs of trying to do so even on a broad brush basis would be likely to exceed the benefits from doing so.

Accordingly, we agree that the approach set out in the consultation paper is the most practical option, although it does need to be recognised that it involves attributing to Law Society members responsibility for complaints arising from the work of legal executives and others within their firms.

We think it undesirable in principle to exempt approved regulators from contribution simply on the grounds that their share of the cost would be very low. Exempting some approved regulators in this way can only lead to an increased burden falling on other approved regulators. However, in view of the comparatively small sums involved, this is not a major issue for the Society on this occasion.

Longer – Term Options

Question 13 – We would welcome views on possible different approaches that might be adopted for the medium term?

For the medium term, the Law Society believes the Legal Services Board should seek to identify which of its activities are general in nature (such as consideration whether a particular legal activity should be brought within the regulatory net) and which are attributable to a particular approved regulator (such as consideration of rules arising from an individual body). Our view at this stage is that:-

- So far as generic activities are concerned, it is likely that continuing to apportion costs in relation to the number of authorised persons covered by each approved regulator is likely to be the most practical approach.
- But that activities attributable to a single approved regulator should in principle be recharged to that regulator alone, subject to proper consultation with and notification to approved regulators of the sums they are likely to have to bear under this head.

So far as the Office for Legal Complaints is concerned, we consider it important that the OLC makes maximum use of case fees, so that the costs of its operations are borne primarily by those authorised persons and firms whose activities give rise to complaints to the OLC, rather than imposing an additional burden on those whose work does not give rise to consumer complaints, or those who are able to resolve consumer complaints before they get to OLC. To the extent that OLC costs are not covered by case fees, our view at this stage is that the balance should be collected by reference to the proportion of OLC cases coming from each approved regulator, as for the implementation costs.

Question 14 – Are respondents content with the proposed longer term timetable for collection, set out in Chapter 3?

Annex

The timetable proposed for future years appears broadly acceptable. So long as there is a good indication of the Law Society's likely liability by the end of June, we will be able to accommodate minor differences in the anticipated levy even if we are not informed about them until later. Q2