

The Levy: funding legal services

Decision paper on consultation paper issued on 9 April 2009 and consultation on form of statutory instrument

This consultation will close on **9 October 2009**

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1. Executive Summary

- 1.1 The Legal Services Board (the “**LSB**”) and the Office for Legal Complaints (“**OLC**”) have been created by the Legal Services Act 2007 (the “**Act**”) to ensure the highest quality of regulation within the legal profession and legal services industry for the benefit of consumers and citizens and ultimately the profession itself.
- 1.2 On 9 April 2009 we issued a consultation paper (the “**First Consultation Paper**”) setting out our suggested approach and the principles we proposed to include in the draft rules (to be made under Section 173 and 174 of the Act) for apportionment of all leviable expenditure for the establishment of the LSB and the OLC and the running costs of the LSB until the end of March 2010. This consultation closed on 2 July 2009.
- 1.3 The purpose of this paper is to:
- provide a summary of the range of responses we received to the questions we posed in the First Consultation Paper;
 - articulate the final policy that the LSB intends to follow in formulating the rules to be made under Sections 173 and 174 of the Act. The main policy change that the LSB has decided to make as a result of the responses is to change the payment schedule for the establishment costs for the LSB and the OLC from 70% in the first year, 20% in the second year and 10% in the final year to a minimum of 34% in the first year and then 33% in each of the second and final year. Further details about this policy change are set out in Section 4 of this paper;
 - explain why we do not consider that two new Approved Regulators (the Association of Chartered Certified Accountants (“**ACCA**”) and the Institute of Chartered Accountants for Scotland (“**ICAS**”)) should be included as “leviable bodies” for the establishment costs for the LSB and OLC, or for the LSB’s running costs for the period to 31 March 2010 (see Section 3 of this paper);
 - consult on the form of the statutory instrument that the LSB proposes to make in relation to the rules to be made under Sections 173 and 174 of the Act (see Section 4 of this paper).
- 1.4 Respondents should note that that we are **not** consulting on the policy that underpins the form of the statutory instrument. This was the purpose of the First Consultation Paper. The consultation contained within this paper relates solely to the form of the statutory instrument itself. The deadline for written responses to this consultation is 5pm on **9 October 2009**. Information about how to make submissions is provided at Section 6 of this paper.

2. Responses to our Consultation

Introduction

- 2.1 This section of the paper sets out a summary of the range of responses that we received to each question we posed in the First Consultation Paper and sets out the final position the LSB has reached as a result of these responses.
- 2.2 We received 13 responses to the First Consultation Paper. A list of these respondents is set out at Annex 1. Full copies of the responses can be found on the LSB website¹.

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

Responses

- 2.3 The majority of respondents either had no comment to make in relation to this question or largely supported our definition of “fair principles” and acknowledged that we had limited data in which to contextualise it.
- 2.4 Responses received include:
- a suggestion from the Council for Licensed Conveyancers (the “**CLC**”) that in future proportionality should “*also take into account the level and scope of activity in the legal services market*”. The CLC also suggest that “*the principle of consistency needs to embrace the underlying fact that all Approved Regulators must contribute to the costs for both the LSB and OLC*” and that “*it is essential that a fundamental principle for the levy for both the LSB and OLC costs that all Approved Regulators must make a contribution to the levy to maintain a sense of industry ownership of the new regulatory framework*”;
 - a recommendation from the Faculty Office on behalf of the Master of Faculties (the “**Faculty Office**”) that “*the apportionment of the levy in question should be proportionate taking account of any different circumstances applicable to some Approved Regulators as compared with others*”;
 - a suggestion from ILEX and ILEX Professional Standards (“**IPS**”) that “*the definition of proportionality be extended to encompass the effect that the levy will have on the regulated community*”. IPS also recommended “*that the LSB look at the diversity impact of their proposals*”; and

¹ http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/submissions_levy.htm

- comments from Tunbridge Wells, Tonbridge and District Law Society who state that *“it is our view that the LSB should act in accordance with the rules of natural justice and these require that it should be transparent in all its dealings in connection with the levy”*. As a general principle the Tunbridge Wells, Tonbridge and District Law Society disagreed with the manner in which we have opted to approach the apportionment of costs for the LSB and OLC separately.

LSB position

- 2.5 We note the majority of respondents are supportive of our definition of “fair principles”. We have noted the suggestions for on-going refinement and will consider these when we approach our consultation on the draft rules for the levy for running costs for the LSB and OLC in early 2010. We remain to be convinced, however, that qualitative judgements of this type will be capable of translation into clear readily understood rules to underpin quantitative judgements.
- 2.6 Contrary to the comments received from the Tunbridge Wells, Tonbridge and District Law Society, we consider that our proposal to apportion the costs for the LSB and the OLC separately is a reasonable one and is in accordance with our definition of “fair principles”. As we stated in the First Consultation Paper, the work of the two bodies is very different and there is therefore very little merit in seeking a common methodology for cost apportionment.

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?

Responses

- 2.7 All but one respondent either had no comment or agreed with the LSB view that the detailed mechanisms for collection of the levy should be detailed in individual Memoranda of Understanding.
- 2.8 Responses received include:
- an acceptance from the CLC that *“individual Memorandum of Understanding between Approved Regulators and the LSB is a pragmatic approach to manage the detailed mechanism for collection of the levy”*. The CLC also suggest that the LSB develop a template Memorandum of Understanding which each Approved Regulator can adapt to suit their particular circumstances;
 - an agreement from the Legal Services Complaints Commissioner and Legal Services Ombudsman for England and Wales (the **“Complaints Commissioner”**) that *“the detailed mechanisms for the collection of the levy should be agreed with each Approved Regulator, and covered by a Memorandum of Understanding”*. The Complaints Commissioner suggests

that any such memoranda should include the risk of late payments and any penalties that might be incurred as a consequence;

- an agreement by the Law Society that “*the detailed mechanism for the collection of the levy should be included in individual Memoranda of Understanding*”. The Law Society suggests that 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;
- a response from the Tunbridge Wells, Tonbridge and District Law Society who questioned why we wished to use Memoranda of Understanding. The Tunbridge Wells, Tonbridge and District Law Society Law Society comment that “... *a set of rules understood by all the Approved Regulators would be preferable to a kind of civil law approach, whereby principles are asserted and the detail imposed by the organ of the state*”.

LSB position

2.9 We note that almost all respondents agree that the LSB should deal with the detailed mechanisms for the collection of the levy in individual Memoranda of Understanding between each Approved Regulator and the LSB. Such an approach will allow the specific requirements of each Approved Regulator to be dealt with on an individual basis.

2.10 The LSB envisages that the Memoranda will detail the full amount payable by the Approved Regulator, will contain a payment schedule and will make provision to deal with late payments. In late November/ early December of this year the LSB will meet with each Approved Regulator to discuss the exact payment mechanics that will need to be inserted into each Memorandum of Understanding.

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

Responses

2.11 A number of the Approved Regulators who responded had comments on our proposed timetable. Responses received include:

- a response from the CLC who remark that they “*would consider it helpful to consider the specific rules for the split of costs and apportionment alongside the consultation of the business plan and overall budget*”. The CLC also observe that “*the timetable does not outline the period during which the LSB will approve the proposed practice fees by Approved Regulators to enable collection of the levy through the practice fees between September and January*”;
- comments from the Faculty Office who observe that “*as to the timetable for the year to 31 March 2010 (para. 4.3) the practising fee for notaries for the*

year commencing 1 November 2009 has already been fixed by an order issued by the Faculty Office. The introduction of a levy will necessitate the issue of a new Order or a Supplementary Order to cover the cost whatever it may ultimately be”;

- a response from the General Council of the Bar (the “**Bar Council**”) who state that they do not accept that “*the costs for 2009/2010 need or should be recovered in their entirety by 28 February 2010*”. The Bar Council suggests that the recovery of implementation costs in year 1 (together with the 3 month running costs of the LSB) should be no different to the recovery of the levy in subsequent years. In this context, the Bar Council states that it is opposed to an annual one lump payment and would like to have the levy payable by instalments. The Bar Council points to the fact that “*neither the LSB nor the OLC appear to have budgeted to reduce their requirements by reference to interest earned from monies on deposit*” and further states that “*this is something that will become more important as interest rates start to move up (as they will)*”. The Bar Council states that it is used to budgeting based on income interest and as the Approved Regulator it believes that it should be the beneficiary of that income. In addition to these points, the Bar Council notes that it collects its practising certificate fees in two tranches with the self-employed bar obliged to pay during January and the employed bar obliged to pay in April. Consequently, the Bar Council argues that the requirement on it to pay the levy by 28 February would have a disproportionate impact on its cash flow. Finally, the Bar Council also notes the reference in the First Consultation Paper to the possibility that the Ministry of Justice (the “**MoJ**”) might charge a capital recharge of 3.5% and that therefore this might be an incentive for early payment. The Bar Council makes the point that whether this is true will actually depend on the cost of money to the Bar Council and whether the MoJ does decide to raise such a charge. The Bar Council considers that it would therefore be wrong for it to agree a repayment schedule without it first having a clear understanding of all the relevant issues, including knowing if the MoJ will impose a capital recharge;
- a joint response from IPReg, CIPA and ITMA who make the point that the levy payment date of February 2010 causes them some difficulty because the levy is likely to be included in the 2010 practice fee but it is most unlikely that they will have received sufficient fees in time to pay the levy by the proposed date. They therefore believe that they may miss the payment date or be in a position to only make part payment on that date;
- comments from the Law Society who state that “*... 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 Ministerial commitment will be adhered to, and that only one third of the implementation cost will be collected on the first year”.

LSB position

- 2.12 The LSB and OLC are funded by grant-in-aid from the Ministry of Justice and it is these funds that finance its operational activities. The LSB is required to act as a collector of amounts due under the levy and once received these funds are transferred to the Consolidated Fund via the MoJ. Neither the LSB nor the OLC are able to derive any benefit from accruing interest.
- 2.13 The LSB recognises that a requirement to pay by 28 February may cause difficulties for some Approved Regulators in terms of making sure they have collected sufficient fees from practicing certificates by this date. Payment will now be required by 31 March each year. All Approved Regulators have known for some time that they will be required to contribute to the set up costs of the LSB and OLC. Most have built this into their practicing certificate fees for 2009.

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

Responses

- 2.14 A number of the respondents grouped their answer to this Question in with their answer to Question 3. For this reason, many of the comments referred to at Question 3 also apply to this Question 4. Responses (other than those referred to at Question 3) include:
- a response from the Faculty Office who commented that *“as to future years, the timetable proposed would be acceptable to the Faculty Office, assuming that notaries will have to contribute towards the cost of running the LSB, provided that the split on the levy is determined by the end of July each year. It is the usual practice for the Faculty Office to notify notaries no later than early September each year as to the fee for the practising certificate renewable on 1 November of that year”*; and
 - comments from Irwin Mitchell who made the suggestion that *“the LSB should enter into discussion with the Law Society and SRA to explore how collection of the LSB/ OLC levy can be sensibly integrated within the existing practising certificate collection system”*.

LSB position

2.15 The current intention is that levy amounts payable by Approved Regulators will be known close to the beginning of each financial year once confirmation of the number of authorised persons has been received subject to any new methods of apportionment being agreed when it consults on the levy for LSB running costs beyond March 2010 and OLC running costs.

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?

Responses

2.16 A number of respondents expressed concerns about our proposal to split the recovery of costs over three years. The main issue that respondents raised was the front loading of the payment in the first year given the current economic circumstances. However, we did also receive one response indicating that the respondent would like the ability to pay the entire cost upfront in one payment.

2.17 Responses received include:

- comments from the City of London Law Society (the “**CLLS**”) who state that “*we are in the middle of a profound economic slowdown that has been felt strongly by legal professionals (as well as others in the economy) ... It therefore seems unnecessarily onerous to front load cost recovery at a time of economic crisis when a three year period for recovery of costs has been envisaged*”. Given this concern the CLLS suggests a loading of costs that it is opposite to that we proposed i.e. 10% in the first year, 20% in the second year and 70% in the final year;
- a response from the CLC who were “*surprised that the proposed split does not reflect the economic context faced by many regulated firms and consequently the Approved Regulators funded by such firms.*” The CLC therefore favours the costs being split 40% in the first year, 30% in the second year and 30% in the third year;
- a response from the Law Society who said that they believe that “*no more than one third of the total levy for the implementation costs should be recovered in the first year ...*”;
- a joint response from IPReg, CIPA and ITMA who commented that “*from our standpoint, however, the need to collect this levy over three years is likely to add to the administrative costs of IPReg and in the consultation document issued by IPReg on practice fee structure, (and with the agreement of CIPA and ITMA) we have proposed that we should collect the whole sum next year. There does not appear to be any objection to*

this – but the consultation is not yet closed. We would therefore wish to have the provision to pass the whole amount to the LSB in 2010”.

LSB position

2.18 The LSB has carefully considered the responses to this question and, given the concerns raised, it has decided to proceed with a minimum split, for establishment costs, of 34% in the first year, 33% in the second year and 33% in the final year with flexibility for Approved Regulators to agree a payment profile in advance of this should they so wish. The full amount of running costs for January to March 2010 will be payable by 31 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?

Responses

2.19 All but one respondent either had no comment or agreed with the LSB view 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.

2.20 Responses received include:

- agreement from the CLC that there are currently no suitable metrics for the assessment of regulatory risk. However, the CLC did note that it would expect in the future that the LSB develop the capability to cost effectively utilise a risk based approach as an element in the apportionment of the levy;
- agreement from the Bar Council that there are currently no suitable metrics for the assessment of regulatory risk in the short term for the costs of the LSB. In addition to this, the Bar Council makes the point that the only fair way for the LSB to raise its implementation costs as well as its day to day running costs is *“by reference to the totality of approved persons, then divided by reference to the number of approved persons regulated by a particular Approved Regulator. In short approved persons are a proxy for regulatory risk, which is a relative proxy for costs”*;
- a response from ILEX and IPS in which they do not agree that there are no suitable metrics for the assessment of regulatory risk. ILEX states that *“commonsense alone would demonstrate that ILEX members are very low in risk in comparison to solicitors and even the Bar”*;
- a joint response from IPReg, CIPA and ITMA who agree that *“there are no readily available metrics to help determine the apportionment of LSB costs”* while also noting that *“this does not mean that metrics should not be used in the future to help determine the proportion of the LSB’s costs to be met by each Approved Regulator”*.

LSB position

2.21 We note that the majority of respondents agree with our analysis 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. As mentioned in the First Consultation Paper, we will explore the subject of regulatory risk further but in the short term we believe that the best approach is to apportion the costs of implementing and running the LSB on a per capita basis, based on the number of members of a profession who hold practising certificates or are otherwise registered to carry out reserved legal activities with an approved regulator.

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

Responses

2.22 All 13 of the respondents agree with our analysis that there are no suitable metrics for the assessment of volume activity to enable it to be used as an apportionment tool for LSB costs in the short term.

2.23 Responses received include:

- agreement from the CLLS that there are no suitable metrics for the assessment of volume activity with the proviso that in the future the volume of activity may very well be a suitable metric in relation to the apportionment of operating costs;
- agreement from the Faculty Office that there are no suitable metrics for the assessment of volume activity with a similar proviso that “*in the longer term it would be fair and reasonable for the LSB to keep open the possibility of using volume of activity for the purpose of apportionment of LSB running costs*”;
- agreement from the Tunbridge Wells, Tonbridge and District Law Society that “*there is no evidence concerning suitable metrics for the assessment of volume activity to enable it to be used as an apportionment tool for LSB costs in the short-term*”. Though again, the Tunbridge Wells, Tonbridge and District Law Society states that “*over time the time spent in dealing with particular Approved Regulators must be something to be borne in mind in any apportionment of the costs of running the LSB*”.

LSB position

2.24 We note that the majority of respondents agree with our analysis that there are no suitable metrics for the assessment of volume activity to enable it to be used as an apportionment tool for LSB costs in the short term. As stated at paragraph 2.21 above, in the short term we believe that the best approach is to apportion the costs of implementing and running the LSB on a per capita

basis, based on the number of members of a profession who hold practising certificates or are otherwise registered to carry out reserved legal activities with an Approved Regulator. However, in the longer term we will consider whether volume of activity could become a suitable metric.

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 number of authorised persons are defined?

Responses

2.25 The majority of respondents agree that the apportionment of costs based on the numbers of authorised persons is the most appropriate mechanism for the recovery of LSB implementation costs. Most respondents also agreed that 1 April is a suitable date at which to define the number of authorised persons.

2.26 Responses received include:

- comments from the CLC who state that *“we consider the apportionment of costs based on the number of authorised persons as a reasonable compromise in the short term in light of the constraints of available data to inform a more robust methodology for the levy”*. The CLC also comments that *“from an administrative point of view 1 April is almost half way through our licence year and we do not foresee any major difficulties with this date”*;
- a response from the Crown Prosecution Service who agree that the LSB’s proposed approach is *“the most straightforward of those identified”*;
- a response from the Faculty Office who disagrees with the apportionment of costs based on the number of authorised persons. The Faculty Office states that *“the Board should be apportioning the implementation costs of the LSB in a manner that reflects cost causation in relation to the need for setting up the Board. On this basis the Faculty Office should be excluded, together no doubt with the other smaller regulators”*. Despite these reservations about the proposed mechanic, the Faculty Office agrees that 1 April is *“an acceptable date”*;
- comments from the Complaints Commissioner who identified some differences between the figures for authorised persons quoted in the First Consultation Paper (which relate to those shown in our Business Plan²) and numbers presently available publicly elsewhere. The Complaints Commissioner made the point that *“it is, therefore, sensible to have a consistent method of calculating membership and a consistent date on when this is measured”*.

² LSB Business Plan 2009/10

http://www.legalservicesboard.org.uk/news_publications/publications/pdf/business_plan_2009_10.pdf

LSB position

- 2.27 The LSB notes that the vast majority of respondents agreed that, at least in the short term, the apportionment of costs should be based on the number of authorised persons. We also note that, on the whole, 1 April appears to be a suitable date at which to define the number of authorised persons. Given these responses, the LSB will therefore be proceeding on the basis of option three that is set out on page 17 of the First Consultation Paper – ie using the number of authorised persons regulated by the Approved Regulator.
- 2.28 We have noted the comments the Complaints Commissioner made about the figures used for authorised persons. The figures used in the First Consultation Paper were for illustrative purposes and we acknowledge the importance of having a consistent method of calculating membership and a consistent date on when this is measured. We believe the proposal, contained in our draft statutory instrument (set out at Annex 2), that each Approved Regulator must provide a statement of the number of authorised persons that they regulate as at 1 April 2009 will achieve this result.

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

Responses

- 2.29 A number of respondents provided comments on others options for the recovery of the implementation costs which should be explored further. Responses received include:
- a response from the CLC that *“a hybrid option of authorised persons and regulated practices is one which should be explored in the future”*;
 - comments from the Faculty Office, that mirror the comments that they gave in response to Question 8, that they should be excluded from paying the implementation costs: *“apportionment of the implementation costs should be considered separately from apportionment of the running costs for the first quarter of 2010 ... The Faculty Office and other small Approved Regulators should be treated on a “cost causation” basis in respect of the implementation costs of the LSB”*.

LSB position

- 2.30 The LSB welcomes the response from the CLC and will consider it when it consults on the apportionment of LSB running costs beyond March 2010 and OLC running costs.
- 2.31 The LSB has considered the response from the Faculty Office but remains of the view that all the existing Approved Regulators should form part of the apportionment for both implementation cost and on-going running costs for the first quarter of 2010 since all Approved Regulators are overseen by it.

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

Responses

- 2.32 All the respondents were broadly in agreement that apportionment based on number of authorised persons in relation to OLC costs does not fit the fairness principles set out in Chapter 3 of the First Consultation Paper.
- 2.33 Responses received include:
- a response from the CLLS who agree that *“it would be unfair, given the historic instance of complaints, for the costs associated with the establishment of the OLC to be apportioned on the number of authorised persons”*. Notwithstanding this, the CLLS does not agree with the proposal that costs should not be borne by Approved Regulators who represent authorised persons who have been involved with less than 0.1% of complaints received. Whilst recognising that the sums involved are comparatively small, the CLLS thinks that *“it is an important point of principle that (in relation to costs that can be clearly and distinctly delineated) there should be no cross subsidisation by one group of authorised persons of any other”*;
 - comments from the CLC who agree that apportionment based on number of authorised persons in relation to OLC costs does not fit the fairness principles. However, the CLC did note that *“we do not agree that the levy for implementation costs for the OLC should be apportioned wholly to reflect cost causation because the OLC shares to a smaller degree a similar responsibility with the LSB to the entire profession irrespective of the number of complaints generated by each Authorised Regulator”*;
 - a response from the Bar Council which says that it accepts that *“the fairest way in which the OLC costs be raised, at this stage, is by reference to the number of service complaints received”*. The Bar Council goes on to query whether *“it might be better if the calculation was based on the number of proved service complaints as it could become as unfair to levy an Approved Regulator according to unproved services complaints as it would be to levy an Approved Regulator where complaints against its authorised*

persons are levelled at another Approved Regulator, such as in the case of ILEX and their authorised persons conduct being the subject of complaints to the SRA, because of the role that ILEX authorised persons have, for instance, in the practices of solicitors”; and

- *comments from the Society of Scrivener Notaries who stated that “the annual volume of complaints made against notaries is minimal. It would be extremely unfair to apply OLC costs per capita”.*

LSB position

- 2.34 The LSB notes that the majority of respondents endorse the LSB’s proposed approach to the collection of implementation costs for the OLC.
- 2.35 The LSB has considered whether Approved Regulators who represent less than 0.1% of complaints should be included as part of the levy for implementation costs for the OLC. However, given that the average number of complaints for the three years 2006-2008 for all of the omitted Approved Regulators was only in the region of 25 complaints³ it would seem disproportionate in terms of administration costs alone to include these Approved Regulators in the apportionment of OLC implementation costs.

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

Responses

- 2.36 A large number of the respondents grouped their answer to this Question in with their answer to Question 10. For this reason, many of the comments referred to at Question 10 also apply to this Question 11. Responses (other than those referred to at Question 10) include:
- *a response from the Crown Prosecution Service who comment that “we can see the rationale in collecting implementation costs based on the number of complaints Approved Regulators receive. We also believe it to be appropriate that those Approved Regulators whose members generate less than 0.1% of the complaints are not charged for the implementation costs”;*
 - *a joint response from IPReg, CIPA and ITMA who “agree with the views reached by the LSB in relation to the apportionment of OLC”. The joint response goes on to say that “as representatives of two of the smaller professions, neither of whom have a track record of service (or conduct) complaints of any significance it would be unfair for registrants in the IP field to have to contribute to the start up costs of the OLC”;*

³ Based on figures given to the LSB by the Approved Regulators during the preparation of the First Consultation Paper

- comments from the Law Society who “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”. The Law Society further adds that “we think it undesirable in principle to exempt Approved Regulators from contribution simply of 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”.

LSB position

2.37 The LSB notes these comments which, in the main, agree with the LSB’s position (set out at paragraph 2.35 above) that it is not appropriate for those Approved Regulators whose members generate less than 0.1% of complaints to share an apportionment of the OLC set up costs

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?

Responses

2.38 A large number of the respondents grouped their answer to this Question in with their answers to Questions 10 and 11. For this reason, many of the comments referred to at Questions 10 and 11 also apply to this Question 12. Responses (other than those referred to at Questions 10 and 11) include:

- a response from the CLC who stated that “we recognise that the apportionment for the first levy has to be relatively simple particularly in light of the embryonic nature of the LSB and OLC. However, in the medium term we hope that other options such as nature of the work will be taken into account rather than just pure number of complaints”; and
- a response from the Society of Scrivener Notaries who comment that they “think the suggested approach is suitable”.

LSB position

2.39 The LSB notes that respondents agree that the apportionment of the first levy has to be structured in a relatively simple manner. As previously stated, in the medium to long term the LSB will be looking at other metrics to apportion the levy.

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

Responses

- 2.40 A number of respondents provided responses on the possible different approaches that might be adopted for the medium term. These responses include:
- a response from the Faculty Office who comment that “*implementation costs should be apportioned on a ‘cost causation’ principle for the LSB as well as the OLC. This would reflect the fact that the notarial profession was brought within the remit of the LSB simply for uniformity of supervisory regulation across the legal profession and not because of any fault in the regulatory system operated by the Faculty Office*”;
 - comments from the Law Society who comment that in relation to the LSB proportion of the levy, “*the Law Society believes the Legal Services Board should seek to identify which of its activities are general in nature ... and which are attributable to a particular Approved Regulator*”. The Law Society’s view is that in relation to generic activities, 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. Whilst activities that are attributable to a single Approved Regulator should in principle be recharged to that regulator alone. In relation to the OLC component of the levy, the Law Society “*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*”. The Law Society believes to the extent that case fees do not cover costs, the balance should be collected by reference to the proportion of OLC cases coming from each Approved Regulator;
 - a response from the Complaints Commissioner who states that “*as we look to the medium-term, I feel that the effects of the levy, particularly on small Approved Regulators, should be monitored and account taken of their concerns to ensure that appropriate changes are made in a timely manner*”.

LSB position

- 2.41 The LSB notes the Faculty Offices comments about cost causation and, as noted at paragraph 2.31 the LSB is of the view that all the existing Approved Regulators should form part of the apportionment for both LSB and OLC implementation cost (although no charge for the OLC should be made where an Approved Regulator accounts for less than 0.1% of complaints).

2.42 The LSB will give consideration to the other suggestions it has received when it comes to consult on the apportionment of LSB running costs beyond March 2010 and OLC running costs.

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

Responses

2.43 The majority of respondents are content with the proposed longer-term timetable for collection.

2.44 Responses received include:

- a response from the Faculty Office who state that they “*would accept the timetable subject to the proviso ... that the decision on the split of the levy is determined and publicised by the end of July each year*”;
- comments from the Law Society who commented that “*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 June, we will be able to accommodate minor differences in the anticipated levy even if we are not informed about them until later*”;
- a response from the Bar Council whose main concern was that the proposed timetable is out of kilter with their current practising certificate fee regime. The Bar Council therefore urges the LSB to “*permit a degree of flexibility in the levy payment process such that takes account of the settled Bar Council income raising process*”.

LSB position

2.45 The LSB will give consideration to these suggestions when it comes to consult on the apportionment of LSB running costs beyond March 2010 and OLC running costs.

3. New Issue

Introduction

3.1. This section discusses an issue that has arisen since the First Consultation Paper was published. This issue is whether two new Approved Regulators, ACCA and ICAS, should be expected to contribute to the implementation costs of the LSB and OLC and the initial running costs of the LSB to 31 March 2010.

Who should be levied?

3.2. When we published the First Consultation Paper the LSB was working on the assumption that the only “leviable bodies” would be those Approved Regulators listed in Part 1 of Schedule 4 of the Act⁴. Since publication of the First Consultation Paper the MoJ has informed us that later this year an order will be made under Schedule 22 of the Act to add both ACCA and ICAS to the list of Approved Regulators contained in Part 1 of Schedule 4.

3.3. Although ACCA and ICAS will therefore be leviable bodies, the LSB considers that the leviable expenditure for the establishment of the LSB and the OLC and the running costs of the LSB until the end of March 2010 should remain apportioned amongst those Approved Regulators currently listed in Part 1 of Schedule 4. The main reasons for suggesting this approach are:

- neither ACCA nor ICAS were part of the flawed system of regulation which led to the passing of the Act; and
- the number of people carrying out the reserved legal activities that ACCA and ICAS will regulate (probate activities) was zero as at 1 April 2009 and is expected to be very small in the period from January to March 2010.

3.4. ACCA and ICAS will both be subject to the levy for the ongoing running costs of the LSB beyond March 2010 and the ongoing OLC running costs.

⁴ The Approved Regulators listed in Part 1 of Schedule 4 of the Act are The Law Society; The General Council of the Bar; The Master of the Faculties; The Institute of Legal Executives; The Council for Licensed Conveyancers; The Chartered Institute of Patent Attorneys; The Institute of Trade Mark Attorneys; and The Association of Law Costs Draftsman

4. Final Policy Position and Proposed Statutory Instrument

Introduction

4.1. In this section we:

- set out the LSB's final policy position on apportionment of all leviable expenditure for the establishment of the LSB and the OLC and the running costs of the LSB until the end of March 2010;
- set out an illustration of how this leviable expenditure would be apportioned under this final policy position;
- provide details of the draft Statutory Instrument that the LSB proposes to make under Sections 173 and 174 of the Act; and
- provide details of the next steps to be taken before the Statutory Instrument comes into force.

The Policy Position

4.2. Having considered all the responses to the First Consultation Paper, the LSB has decided on a final policy position which includes the following key elements:

- the apportionment of costs for the LSB and the OLC should be dealt with separately. As we explained in the First Consultation Paper, the work of the two bodies is very different. Whereas the LSB oversees all aspects of the regulation of the profession, the OLC deals with one specific element of regulation, service complaints;
- by 31 March 2010 each Approved Regulator should pay the LSB either:
 - the full amount of their apportionment of the establishment costs for the LSB and the OLC as well as budgeted running costs for the LSB up until the end of March 2010; or
 - if the Approved Regulator elects to pay instalments, the full amount of the running costs up to March 2010 and a minimum of 34% of their apportionment of the establishment costs;
- if the Approved Regulator elects to pay in three yearly instalments, by 31 March 2011 a further minimum 33% of the establishment costs for the OLC and the LSB should be collected, with the remaining amount being collected by 31 March 2012. We have adopted this revised phasing to take account of concerns raised about the "front loading" of the payments;

- the levy for establishment costs for the LSB and running costs for the LSB up until the end of March 2010 should be apportioned between Approved Regulators based on the proportion of authorised persons regulated by each body on 1 April 2009;
 - the levy for the establishment costs for the OLC should be apportioned based on the number of service complaints, relative to the total number of service complaints against all authorised persons, which an Approved Regulator has received for a rolling three-year period which ends with the end of the previous calendar year, for every year in which implementation costs are collected; and
 - those Approved Regulators who regulate authorised persons who between them represent less than 0.1% of the total number of service complaints will not be levied.
- 4.3. Other than the alteration in the split of the levy to a minimum 34% in the first year, 33% in the second year and 33% in the final year, the remainder of the policy outlined above is consistent with that which was originally proposed in the First Consultation Paper.

Apportionment Illustration

- 4.4. The First Consultation Paper gave illustrations of how the levy for the implementing and running of the LSB and levy for implementing the OLC would be apportioned based on the preferred options set out in the First Consultation Paper. Below we update those illustrations to take account of the final policy position set out above.

Levy for the costs of implementing and running the LSB

- 4.5. In the First Consultation Paper we referred to the fact that the LSB costs (on a resource basis) came to £5,881,000. This figure is made up of £4,741,000 implementation costs to the end of 2009 and of £1,140,000 running costs for January to March 2010⁵.
- 4.6. The illustration given below is on the basis that all the Approved Regulators elect to split the payment over three years so that the LSB expects to recover £2,751,940 from the Approved Regulators by 28 March 2010. This figure is made up of £1,611,940 (being 34% of the implementation costs of £4,741,000) and £1,140,000 running costs.

⁵ See paragraph 5.1 of the First Consultation Paper

Regulator	Number of authorised persons⁶	Percentage of the cost (%)	Amount payable by 2009/10 (£)⁷
<i>Law Society</i>	108,407	79.90	2,198,708
<i>Bar Council</i>	15,030	11.08	304,838
<i>Council for Licensed Conveyancers</i>	1,034	0.76	20,972
<i>Institute of Legal Executives</i>	7,488	5.52	151,871
<i>Institute of Trade Mark Attorneys</i>	844	0.62	17,118
<i>Chartered Institute of Patent Attorneys</i>	1,782	1.31	36,142
<i>Faculty Office</i>	851	0.63	17,260
<i>Association of Law Costs Draftsmen</i>	248	0.18	5,030
Total	135,684	100	2,751,940

- 4.7. On the above basis, if the Approved Regulators pass on the costs to their members on a per capita basis, each authorised person would pay **£20.28**.

Levy for the costs of implementing the OLC

- 4.8. In the First Consultation Paper we referred to the fact that budgeted implementation costs for the OLC are assumed to be £15,159,000 in cash and resource terms⁸.
- 4.9. The illustration given below is on the basis that all the Approved Regulators elect to split the payment over three years so that the LSB expects to recover £5,154,060 (being 34% of the implementation costs of £15,159,000) from the Approved Regulators by 28 March 2010.

⁶ See page 6 of the LSB Business Plan 2009/10

http://www.legalservicesboard.org.uk/news_publications/publications/pdf/business_plan_2009_10.pdf

⁷ Assuming numbers of authorised persons are the same as indicated in the Business Plan

⁸ See paragraph 6.4 of the First Consultation Paper

Regulator	Average number of service complaints 2006-2008⁹	Percentage of the cost (%)	Amount payable by 2009/10 (£)
<i>Law Society</i>	14,093	95.35	4,914,158
<i>Bar Council</i>	465	3.14	162,143
<i>Council for Licensed Conveyancers</i>	223 ¹⁰	1.51	77,759
Total	14,781	100	5,154,060

- 4.10. On the above basis, if each of these Approved Regulators passes on the costs to their members on a per capita basis, each authorised person regulated by these Approved Regulators would pay the following amount in addition to the amount set out in paragraph 4.7:

Regulator	Number of authorised persons¹¹	Per capita cost (£)
<i>Law Society</i>	108,407	45.33
<i>Bar Council</i>	15,030	10.79
<i>Council for Licensed Conveyancers</i>	1,034	75.20

Proposed Statutory Instrument

- 4.11. A draft of the statutory instrument that the LSB proposes to make under Sections 173 and 174 of the Act which implements the above policy is set out at Annex 2.
- 4.12. You are invited to provide comments on the drafting of this proposed statutory instrument.

⁹ Based on figures given to the LSB by the Approved Regulators during the preparation of the original Consultation Paper

¹⁰ This is based on our assumption that approximately 10% of the complaints that the CLC deals with are solely disciplinary (and therefore not relevant). This number will need to be verified with the CLC

¹¹ See page 6 of the LSB Business Plan 2009/10

http://www.legalservicesboard.org.uk/news_publications/publications/pdf/business_plan_2009_10.pdf

Next Steps

- 4.13. As mentioned above, you are invited to provide comments on the draft of the proposed statutory instrument set out at Annex 2. The deadline for providing these comments is 5pm on 9 October 2009. Information about how to make submissions is provided at Section 6 of this paper.
- 4.14. Once the consultation on the draft statutory instrument has closed we will review the responses we have received and make any amendments that are required to the draft statutory instrument.
- 4.15. In late November/ early December 2009 we will meet with the Approved Regulators to discuss the payment mechanics that will need to be inserted into a Memorandum of Understanding. These documents will then be finalised.
- 4.16. Towards the end of October 2009 we will provide a final draft of the statutory instrument to the Lord Chancellor as the Lord Chancellor needs to consent to the form of rules providing for the imposition of the levy¹².
- 4.17. Once the Lord Chancellor has given his approval, the statutory instrument will go through the Parliamentary process with the intention that it will come into force on 1 January 2010 when the LSB takes up its full powers.
- 4.18. The levy will be collected either in full by 31 March 2010 or in proportions not less than: 34% by 31 March 2010, 33% by 31 March 2011 and by 33% by 31 March 2012.

¹² See Section 173(4) of the Act

5. Impact Assessment

Introduction

- 5.1. Those directly impacted by the levy will be the current Approved Regulators and those in the future who choose to be Approved Regulators either to solely regulate authorised persons or to also be Licensing Authorities for Alternative Business Structures¹³.
- 5.2. The levy will also impact authorised persons who are regulated by Approved Regulators and, to the extent that any additional costs are not absorbed, ultimately consumers.

What is the problem under consideration? Why is intervention necessary?

- 5.3. Sections 173 and 174 of the Act require the LSB to make rules in relation to the levy on Approved Regulators for both the establishment and ongoing costs of the LSB and OLC. As we noted in the First Consultation Paper, the levy and the fact that the profession will meet the costs of the two organisations is something that Parliament has agreed to, based on the regulatory impact assessment at the time the Act was agreed.
- 5.4. The obligations to comply with the rules contained in the proposed statutory instrument (set out at Annex 2) will apply to the current eight Approved Regulators who are set out in Part 1 of Schedule 4 of the Act. Any other bodies that are added to Part 1 of Schedule of the Act in accordance with an order made under Schedule 22 of the Act will become “leviable bodies” for the purposes of the levy dealing with the apportionment of the ongoing costs of the LSB and OLC which we will be consulting on early next year.

What are the policy objectives and the intended effects?

- 5.5. The policy objectives and intended effects are to provide for the apportionment, in accordance with “fair principles”, of all leviable expenditure for the establishment of the LSB and OLC and the running costs of the LSB until March 2010.

What policy options have been considered? Please justify any preferred option

- 5.6. The options that we have focused on in this paper and in the First Consultation Paper have focused on how the LSB will apportion the costs between the different Approved Regulators. We do not consider that it is appropriate for the LSB to do nothing (a standard consideration in Impact Assessments). The decision to levy has been discussed in consultation

¹³ Part 5 of the Act allows for alternative business structures to be established which will enable law firms to explore new ways of organising their businesses to be more cost effective, permit different kinds of lawyers and non-lawyers to work together, and allow for external investment

documents, independent reviews, White Papers and parliamentary debates. The Act requires the LSB to apportion the levy between Approved Regulators.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

- 5.7. The proposals in the First Consultation Paper and this paper only relate to the apportionment of leviable expenditure for the establishment of the LSB and the OLC and running costs of the LSB until March 2010. The apportionment of LSB running costs beyond March 2010 and the apportionment of OLC running costs will be dealt with in a separate consultation which will be issued in early 2010.

Annual Costs

- 5.8. One-off: Implementation cost for the LSB to end of 2009: £ 4,741,000;
Assumed Implementation cost for the OLC: £15,159,000
- 5.9. Running costs for the LSB to 31 March 2010: £1,140,000

Annual Benefits

- 5.10. It is not possible to put into monetary terms the benefits that are likely to arise from establishing the LSB and OLC in terms of their implementation costs and 3 months' LSB running costs.

What is the geographic coverage of the policy/option?

- 5.11. England and Wales.

On what date will the policy be implemented?

- 5.12. It is anticipated that the LSB will take on its full powers on 1 January 2010 and the rules will apply from then.

Which organisation will enforce the policy?

- 5.13. The LSB.

Does enforcement comply with Hampton principles?

- 5.14. Yes.

Will implementation go beyond minimum EU requirements?

- 5.15. Yes. EU requirements do not require the regulatory framework set out in the Act.

What is the value of the proposed offsetting measure per year?

5.16. Nil.

What is the value of changes in greenhouse gas emissions?

5.17. Nil.

Will the proposal have a significant impact on competition?

5.18. No.

Annual cost (£-£) per organisation (excluding on-off)

5.19. The cost per authorised person of the LSB's implementation and January – March 2010 running costs is expected to be around £20.28. This covers all types of Approved Regulator. The cost of implementing the OLC will be borne by those regulated by the Law Society (around £45.33 per authorised person), the Bar Council (around £10.79 per authorised person) and the Council for Licensed Conveyancers (around £75.20 per authorised person).

Are any of these organisations exempt?

5.20. All those levied will have to pay. However, those Approved Regulators that regulate authorised persons who between them represent less than 0.1% of the total number of service complaints will not have to contribute to the OLC's implementation costs.

Impact on Admin Burdens Baseline (2005 Prices)

5.21. The additional cost per authorised person for each Approved Regulator is set out in paragraph 5.19. There are additional costs associated with collecting this money since it will be collected as part of the practising fees. This additional cost is on top of the existing practising fees of:

- Law Society: £995 in 2009, £1180 in 2010;
- Bar Council: from £62 for a junior of 0-2 years call to £931 for a QC (self-employed) and £62- £660 for employed;
- Council for Licensed Conveyancers: £880 full licence and £480 employed licence.

Evidence Base

5.22. Extensive impact assessments were carried out by the MoJ in the process of the Legal Services Bill's progress through Parliament. The Act requires the LSB to make rules for the imposition of a levy, ensuring that the apportionment of it between leviable bodies is based on fair principles. This

section therefore sets out how, at a high level, we have considered the various elements of the impact assessment.

Competition

- 5.23. Establishing the LSB and the OLC should lead to better regulation and complaints handling across the legal sector, which may in turn enhance its competitiveness.

Small Firms Impact Test

- 5.24. Despite the work the LSB is doing to make the levy as straightforward and as fair as possible, the levy could pose risks to the sustainability of the smaller regulators, but only if sufficient numbers of their members were to conclude that the additional costs on their practising certificates were such as to cause them to decide to exit the profession.
- 5.25. The LSB considers that the per capita charges proposed, although they may not be welcomed by members of the smaller bodies, will not be of an order of magnitude that is likely to have such an impact. To the extent that any significant adverse impact does occur, our final Business Plan notes the representations that have been put to us about the desirability of improving consumer protection by ensuring more effective protection of title for the smaller regulators. This approach may help to ensure consumer protection is not threatened, either by unregulated practitioners making misleading claims about their professional status or by the effectiveness of ongoing regulation being jeopardised.

Legal Aid

- 5.26. We expect minimal direct impact. However, establishing the LSB and the OLC should lead to better regulation and complaints handling across the legal sector, which may in turn enhance the competitiveness of the Legal Aid market.

Race/Disability/Gender equalities

- 5.27. Ensuring a diverse legal profession is one of the Regulatory Objectives¹⁴ and is, therefore, something we will need to take account of in all our proposals, including the levy. Our initial assessment is that the impact of equality and diversity issues, given the sums of money involved, appear to be low.

¹⁴ The Regulatory Objectives are

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services such as are provided by authorised persons;
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

However, as we noted in the First Consultation Paper, as a wide generalisation, the small regulators tend to have a higher proportion of lower earners than the larger bodies and it is therefore possible that lawyers from this end of the profession could move out of the regulated sphere.

Human Rights

5.28. No impact.

Rural Proofing

5.29. The LSB's policy on the levy is not expected to have a specific impact on rural areas.

Sustainability, carbon emissions, environment and health

5.30. There is no impact expected on sustainability, carbon emissions, environment and health.

6. How to Respond

- 6.1. Our consultation period ends at 5pm on **9 October 2009**. In accordance with Section 205(3) of the Act, you are therefore given notice that any representation about the proposed statutory instrument set out at Annex 2 must be received prior to the end of this period.
- 6.2. We would prefer to receive responses electronically (in Microsoft Word format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Email: consultations@legalservicesboard.org.uk

Post: Mahtab Grant,
Legal Services Board,
7th Floor, Victoria House,
Southampton Row,
London WC1B 4AD

Fax: 020 7271 0051

- 6.3. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.
- 6.4. We are also keen to engage in other ways and we would welcome contact with stakeholders during the consultation period.
- 6.5. If you have any questions about this consultation, please contact the LSB by telephone (020 7271 0050) or by one of the methods described in paragraph 6.2.

Annex 1 – List of respondents

- The City of London Law Society
- Council of Licensed Conveyancers
- Crown Prosecution Service
- The Faculty Office on behalf of the Master of Faculties
- The General Council of the Bar
- ILEX and ILEX Professional Standards
- Irwin Mitchell
- Joint response from IPReg, CIPA and ITMA
- The Law Society
- Legal Services Complaints Commissioner/ Legal Services Ombudsman for England and Wales
- Office of Fair Trading
- Tunbridge Wells, Tonbridge and District Law Society
- The Society of Scrivener Notaries

Annex 2 – Proposed statutory instrument

STATUTORY INSTRUMENTS

2009 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Levy) Rules 2009

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

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(3) and (4)(b) of the Legal Services Act 2007^(a).

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.

General

Citation and commencement

- 1.—(1) These Rules may be cited as the Legal Services Act 2007 (Levy) Rules 2009.
- (2) These Rules come into force on [date].

Interpretation

2. In these Rules—

“the 2007 Act” means the Legal Services Act 2007;

“approved regulator”, “authorised person”, “consumer”, “manager”, “person” and “reserved legal activity” have the same meaning as in the 2007 Act;

“the Board” means the Legal Services Board;

“leviable Board expenditure” has the meaning given in section 173(6) of the 2007 Act;

“leviable body” means a body designated as an approved regulator by Part 1 of Schedule 4 to the 2007 Act, as that Part had effect on the day on which the Act was passed;

“leviable Lord Chancellor expenditure” is to be construed in accordance with section 173(9) and (10) of the 2007 Act;

^(a) 2007 c.29.

“leviable OLC expenditure” is to be construed in accordance with section 173(7) and (8) of the 2007 Act;

“the OLC” means the Office for Legal Complaints;

“service complaint” means a complaint made to a leviable body which—

- (a) is made by, or on behalf of, a consumer;
- (b) relates to an act or omission of any person which occurred at a time when that person—
 - (i) was authorised by the leviable body to carry on one or more reserved legal activities, or
 - (ii) was not so authorised but was a manager or employee of a person who was so authorised; and
- (c) is eligible to be dealt with under arrangements made by the leviable body for the determination of consumer complaints.

The scope of the levy imposed by these Rules

3.—(1) These Rules provide for the imposition of a levy on each leviable body for the purpose of raising an amount corresponding to the aggregate of the expenditure referred to in paragraphs (2), (3) and (4).

(2) The expenditure referred to in this paragraph is such of the following as is incurred in connection with the establishment of the Board—

- (a) leviable Board expenditure; and
- (b) leviable Lord Chancellor expenditure.

(3) The expenditure referred to in this paragraph is such of the following as is incurred in connection with the establishment of the OLC—

- (a) leviable OLC expenditure; and
- (b) leviable Lord Chancellor expenditure.

(4) The expenditure referred to in this paragraph is leviable Board expenditure which—

- (a) is incurred in respect of the financial year referred to in paragraph 25(6)(a) of Schedule 1 to the 2007 Act; and
- (b) does not fall within paragraph (2)(a).

(5) Estimated expenditure may be taken into account for the purposes of determining the amount of any expenditure for the purposes of these Rules.

(6) The Board must obtain the Lord Chancellor’s agreement to the amount to be raised by means of the levy under these Rules.

(7) Nothing in these Rules affects the power in section 173 of the 2007 Act to raise any amount which—

- (a) does not fall within paragraph (2), (3) or (4); or
- (b) may be required on account of any discrepancy between the amount to be raised by way of the levy under these Rules and the amount actually received by the Board (for example, when actual expenditure and receipts exceed estimates made under paragraph (5)).

Amount payable by each leviable body

Determining the amount of the levy for each leviable body

4.—(1) The amount of levy that each leviable body must pay to the Board is to be determined by adding together the amounts determined under rules 5, 6 and 7 in relation to that leviable body.

(2) The Board must notify each leviable body of the imposition of the levy, stating—

- (a) the amount determined for that body; and
- (b) the deadline for payment determined in accordance with rule 9,

and the leviable body must pay that amount to the Board.

Amount of levy: establishment costs of the Board

5.—(1) The amount determined under this rule in relation to any leviable body is the relevant proportion of the expenditure referred to in rule 3(2).

(2) To determine the “relevant proportion”, take the numbers as at 1st April 2009 of—

(a) the persons who are authorised by the leviable body to carry on one or more reserved legal activities; and

(b) the persons who are authorised by all leviable bodies to carry on one or more such activities,

and calculate what proportion the number of the persons referred to in sub-paragraph (a) bears to the number of the persons referred to in sub-paragraph (b).

Amount of levy: establishment costs of the OLC

6.—(1) Subject to paragraph (3), the amount determined under this rule in relation to any leviable body is the relevant proportion of the expenditure referred to in rule 3(3).

(2) To determine the “relevant proportion”, take the numbers of—

(a) the service complaints received by the leviable body in the course of the three year period ending on 31st December 2008; and

(b) the service complaints received by all leviable bodies in the course of the same three year period,

and calculate what proportion the number of service complaints referred to in sub-paragraph (a) bears to the number of service complaints referred to in sub-paragraph (b).

(3) No amount is payable under this paragraph if the “relevant proportion” of service complaints received by the leviable body is less than 0.1%.

Amount of levy: running costs of the Board for the financial year ending in 2010

7.—(1) The amount determined under this rule in relation to any leviable body is the relevant proportion of the expenditure referred to in rule 3(4).

(2) For these purposes, the “relevant proportion” is to be determined in the manner specified in rule 5(2).

Duty to provide information required to calculate the levy

8.—(1) For the purpose of enabling the calculations described in rules 5, 6 and 7 to be carried out, each leviable body must provide the Board with the information required by paragraphs (2) and (3).

(2) The leviable body must provide—

(a) a statement of the number as at 1st April 2009 of all persons authorised by the leviable body to carry on one or more reserved legal activities; and

(b) a statement of the number of service complaints received by the leviable body in the course of the three year period ending on 31st December 2008.

(3) Any statement provided under paragraph (2) must contain or be accompanied by such information as will enable the Board, or such person as the Board may appoint, to confirm the numbers stated.

(4) The information must be provided no later than the end of the period of one month starting with the date on which these Rules come into force.

Arrangements for payment

Making payment

9. Subject to rule 10, the amount of levy that a leviable body is required to pay to the Board under rule 4 must be paid in full by the leviable body no later than—

(a) 31st March 2010; or

(b) if later, the end of the period of 28 days starting with the date of the notice given to the leviable body in accordance with rule 4(2).

Agreement to delay part of payment

10.—(1) A leviable body may enter into a written agreement with the Board to delay payment of part of the amount of the levy.

(2) No agreement under paragraph (1) may provide for a delay in payment of any amount that exceeds the aggregate of—

- (a) 66 per cent. of the amount determined for the leviable body under rule 5 (“amount A”); and
- (b) 66 per cent. of the amount determined for the leviable body under rule 6 (“amount B”).

(3) Each agreement must—

- (a) specify the percentage of either or both of amount A and amount B which is to be subject to a delay in payment under the agreement;
- (b) specify the minimum percentage of amount A, and of amount B, which the leviable body must pay no later than 31st March 2011; and
- (c) provide that the leviable body must pay any outstanding balance of either or both amounts no later than 31st March 2012.

(4) Where the percentage of amount A, or of amount B, which is specified under paragraph (3)(a) is 34 per cent. or more, the minimum payment specified under paragraph (3)(b) in relation to that amount must be at least 33 per cent.

(5) Nothing in this rule affects the liability of the leviable body to pay the remainder of the amount of the levy in accordance with the deadline for payment determined in accordance with rule 9.

Interest payable on late payment

11. If payment is not made by a leviable body in accordance with the requirements of rules 9 and 10, the Board is entitled to charge interest on amounts unpaid at the rate of statutory interest prescribed under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998^(b).

Signed by authority of the Legal Services Board

Name
Chairman of the Legal Services Board

Date

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules impose a levy under sections 173 and 174 of the Legal Services Act 2007 (c.29). The levy covers the establishment costs of the Legal Services Board (“the Board”), the establishment costs of the Office for Legal Complaints (“the OLC”) and the running costs of the Board for the first financial year after its establishment (the financial year ending with 31st March 2010).

Rule 3 sets out the scope of the levy. The total amount to be raised is to cover expenditure incurred on establishing the Board and the OLC and on the Board’s first year running costs.

Rules 4 to 8 specify the procedure for determining the amount of levy that each leviable body must pay once the Board has notified it of the amount due. That amount is determined for each leviable body by adding together a proportion of the categories of expenditure referred to in rule 3 and that proportion is determined under rules 5, 6 and 7. In relation to the Board’s establishment and first year running costs, rules 5 and 7 provide for a leviable body to pay an amount according to its proportionate share of the persons authorised by all leviable bodies to carry on reserved legal activities. In relation to the OLC’s establishment costs, rule 6 provides for a leviable body to pay an amount according to its proportionate share of the service complaints received by all leviable bodies. Rule 8 requires leviable bodies to provide the Board with the information necessary to calculate these proportions.

^(b) 1998 c.20.

Rule 9 requires that the levy must be paid in full no later than 31st March 2010 or, if later, 28 days after the date of the notice to the leviable body under rule 4(2). But rule 10 states that this requirement does not apply if the Board and the leviable body agree in writing that the leviable body may delay payment of part of the amount due, subject to certain limits specified in that rule. Interest is payable under rule 11 in the event of any late payment.