



**LSB consultation on proposed rules under sections 173 and
174 of the Legal Services Act 2007**
The CLC's response
July 2009

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Introduction

1. The Council for Licensed Conveyancers ("the CLC") was established under the provisions of the Administration of Justice Act 1985 as the Regulatory Body for the profession of Licensed Conveyancers. As set out at section 28 Legal Services Act 2007 the CLC must, so far as is reasonably practicable, act in a way—
 - (a) which is compatible with the regulatory objectives (set out at section 1 of the Legal Services Act 2007), and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
2. Further, the CLC must have regard to-
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

The purpose of the CLC

3. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
 - secure adequate consumer protection and redress;
 - promote effective competition in the legal services market, and;provide choice for consumers
4. The CLC welcomes the opportunity to respond to the LSB's consultation on proposed rules to be made under sections 173 and 174 of the Legal Services Act 2009.

Consultation Questions

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

5. We appreciate that the LSB is starting off with limited data which invariably influences the contextual definition of fair principles. However, we hope in the future that proportionality also takes into account the level and scope of activity in the legal services market.
6. As regulation increasingly operates at the individual and entity level, the principle of proportionality should reflect how the regulated community operates. Likewise, a proportionate levy should balance the scope and/ or share of activity in the legal services market.
7. We consider 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. The apportionment of the bulk of the levy may differ

depending on the degree of 'targeting' adopted in subsequent years. However, it is essential that a fundamental principle for the levy for both the LSB and OLC costs is that all Approved Regulators must make a contribution to the levy to maintain a sense of industry ownership of the new regulatory framework.

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 memorandum most usefully contain?

8. We accept 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. However, in order to minimise the risk that this approach inadvertently results in relatively limited benefits for some Approved Regulators. We suggest that a template Memorandum of Understanding should be developed which Approved Regulators can adapt to suit their particular circumstances.

Question 3 – We would welcome comments from Approved Regulators on the timetable for the first year?

9. We would consider it helpful to consider the specific rules for the spilt of costs and apportionment alongside the consultation on the business plan and overall budget.
10. In addition, 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.

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

11. We have no comment.

Questions 5 – We welcome views on what timetable the implementation 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?

12. We have grave concerns about the proposed spilt of the implementation and running costs. We are 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. Furthermore, we cannot understand the justification of the proposed split on the basis that the split is in the best interests of the Approved Regulators.
13. We favour the costs to be split 40% in the first year, 30% in the second year and 30% in the third year.

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? ?

14. We agree that there are currently no suitable metrics for the assessment of regulatory risk. However, we would expect in the future that the LSB will develop the capability to cost effectively utilise a risk based approach as an element in the apportionment of the levy.

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 to March 2010?

15. We agree that there are currently no suitable metrics for the assessment of volume of activity to enable it to be used as an apportionment tool for LSB costs up to March 2010. However, we would expect in the future that the LSB will develop the capability to cost effectively utilise the volume of activity as an element in the apportionment of the levy.
16. We recognise as outlined in the consultation document that certain strands of the LSB's work such as diversity and opening the market will benefit the entire regulated community and thus it is not appropriate for apportionment along the lines of volume of activity. However, we consider that the fulfilment of certain regulatory objectives will invariably be more relevant to certain sectors in the legal services market.
17. A suggestion to inform the distribution based on the volume of activity in the future is for the LSB's future business plans to breakdown costs by regulatory objectives. We do not wholly accept that utilising volume of activity will be largely informed by the previous year's work. We reckon that the business plan provides the platform to make planning assumptions about the consumption of resources and the corresponding apportionment of costs.

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?

18. 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.
19. The appropriateness of 1 April will depend on whether the key consideration is administrative convenience or to closely reflect the number of authorised persons likely to be responsible to pick up the costs of the levy through the practice fees.
20. From an administrative point of view the 1 April is almost half way through our licence year and we do not foresee any major difficulties with this date. The only slight downside in the number of authorised persons by 1 April is that it will include those who intend to retire by 30 June. We considered whether the relevant date should be the annual renewal date for each Approved Regulator but considered that this did not provide the degree of consistency required by these rules.

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

21. A hybrid option of authorised persons and regulated practices is one which should be explored in the future.

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?

22. We agree that the apportionment based on the number of authorised persons in relation to the total OLC implementation costs does not fit the fairness principles set out in Chapter 3. However, we consider that a proportion of those costs should be apportioned based on the number of authorised persons. We do not agree that the levy for the 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 Approved Regulator. The existence of an effective OLC should increase confidence in the legal profession as a whole, irrespective of where complaints originate from. Therefore all Approved Regulators should make some contribution to the set up costs.

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

23. We accept that the proposed apportionment by the number of complaints generated is a relatively simple approach. However, as highlighted above, we consider that a hybrid approach should be adopted for the OLC costs where the apportionment would largely be by the number of complaints generated. We consider that such an approach is equally simple and reflects the true value of setting up the OLC to the profession as a whole.

Question 12 - Are there options other than those canvassed in this paper which should be explored further for the apportioning of the implementation costs of OLC?

24. We recognise that the apportionment for the first levy has to be relatively simple particularly in light of the embryonic nature of the LSB & 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.
25. It is fairly evident that certain types of work such as conveyancing are more likely to result in complaints partially due to the volume of transactions, poor service by authorised persons and in some instances due to the lack of appropriate oversight by relevant authorities to prevent some sub markets in legal services from functioning ineffectively as evidenced by the impact of referral fees.

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

26. We have highlighted some possible alternative options to consider for the future. In summary, we favour a hybrid approach which allows balancing of key factors to be taken into account in the apportionment of the levy.

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

27. Subject to the comments made earlier, we are content with the proposed longer-term timetable for collection set out in Chapter 4.

Summary

28. We recognise the limitations on data faced by the LSB in developing the rules for the first levy of implementation costs and running costs up to March for the LSB and OLC. We therefore broadly support the proposed approach to apportionment of costs for the first levy.
29. We hope that the methodology for apportionment of the costs will develop over the coming years to enhance the proportionality of the levy.
30. Generally, the CLC welcomes the approach taken by the LSB and looks forward to engaging with the LSB and other parties in the implementation of sections 173 and 174 of the Legal Services Act 2007.