

**Response by Irwin Mitchell to the Legal Services Board
Consultation paper
“The Levy: funding legal services regulation”**

Introduction

1. As a major National firm providing a wide range of legal services to consumers of all kinds Irwin Mitchell has taken an active interest in the post Legal Services Act (LSA) regulatory reforms and in support of the general thrust of the LSA reforms, has responded to all consultations since the first report by Sir David Clementi. Irwin Mitchell also has a substantial regulatory practice which provides insight and understanding of how the SRA (and other regulators) deal with the clients we represent on regulatory matters.
2. By way of general comment we believe that regulators of the legal profession should behave in a manner that is proportionate, fair and reasonable, coupled with a clear understanding of the commercial drivers likely to influence practitioners as they face up to the most significant challenges and changes in the legal services market for generations. If regulators are to be able to carry out their responsibilities in a flexible, professional and pragmatic manner, they should acquire a good understanding of the real issues facing the individuals, firms, and ‘entities’ subject to regulation. Indeed, the priority approach of legal regulators should be to convey to those whom it regulates that its principal aim is to assist them to ‘get it right’ in a manner that will encourage them to take advantage of the opportunities offered by the LSA rather than being restrained from development of their businesses by over-regulation that inhibits the provision of legal services to consumers.

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

We agree that the definition of fair principles should match the principles of better regulation and that the proposed approach is fair and reasonable. We note the LSB’s comments that the size of the levy should be proportionate and that the collection should not put undue administrative burdens on approved regulators. Equally, it should not place undue administrative or other burdens on the individuals, professional firms, and entities that are responsible for paying the levy. Further, the levy to fund the LSB & the OLC should not be viewed in isolation from the other funds raised by way of levy via the practising certificate fee. Ideally the collection of the various funds to be raised by way of levy from

the profession should be integrated into a single administrative task and a single timetable for collection.

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?

The Memoranda of Understanding method is appropriate and should set out clearly the obligations and responsibilities that should apply between the approved regulators and the LSB so that they can be readily understood by professionals and consumers.

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

Although we are not an approved regulator we do have comments on the timetable (see question 4 below).

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

Although this consultation relates to implementation rather than running costs we are concerned that the proposed timetable for collection of implementation costs (and of future running costs) must be seen against the background of the other funds already raised by way of levy on the profession via the practising certificate fee by the Law Society/SRA. The Law Society/SRA would normally collect the practising certificate fee by 31 October 2009 at a level that would have been approved by the Law Society Council at its meeting in July 2009. However, if it is intended to collect the LSB/OLC levy in February 2010 this will mean two separate levies in the same financial year. For the many firms that conclude their financial year on 31 March or 30 April this is undesirable both administratively and in budget planning. It would be preferable to delay collection of the practising certificate fee by the Law Society/SRA so that it can dovetail with the LSB/OLC levy, forming a single demand, suitably broken down with an explanation of the separate levies being collected. We therefore suggest 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.

Question 5 - We would 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?

As to timetable please see our answer to question 4. We agree that the split of 70%/20%/10% is reasonable. The true financial impact on firms should be taken into account when the actual figures are known (as opposed to the indicative figures in the LSB Business Plan).

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?

We agree with the LSB's view expressed in paragraph 5.9 that at present there are no suitable metrics to enable assessment of regulatory risk as an apportionment tool for levy purposes for the LSB.

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?

Consistent with our reply to question 6 we agree that there are at present no suitable metrics for the assessment of volume activity to enable it to be used as an apportionment tool for the LSB in the short term.

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 agree that the proposal in relation to the apportionment of costs based on number of authorised persons is fair. With regard to the timetable please see our response to question 4.

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

We are not aware of any other options for the recovery of implementation costs.

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?

and

Question 11 – Are there options other than those canvassed in this paper which should be explored further for the apportioning of the implementation costs of the OLC?

In answer to questions 10 & 11 we agree that calculation of the apportionment of implementation and (later) running costs requires a difficult balance between per capita numbers of professionals on the one hand and complaints per Approved Regulator on the other. On balance we agree that it is fair to proportion the levy as recommended in paragraph 6.12. However, great care should be taken in assessing whether the 'polluter pays' approach should be adopted by the OLC and the SRA in collecting funds to meet their running costs, beyond the existing polluter pays principles that are based on complaints upheld rather than the number of complaints made.

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?

Not at this stage. See our response to question 13.

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

We would be pleased to contribute further to this debate which has a distance to go to ensure the right balance between funding a regulatory and complaints system that meets the needs of the consumer at the same time as being fair to the profession.

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

Please see our response to question 4.

13 July 2009