



INVESTORS IN PEOPLE

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Cathryn Hannah
Legal Services Board
7th Floor Victoria House
Southampton Row
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16 June 2009

Dear Cathryn

CONSULTATION RESPONSE: “THE LEVY:FUNDING LEGAL SERVICES REGULATION”

I am pleased to provide a response in my capacity as both Legal Services Ombudsman for England and Wales and Legal Services Complaints Commissioner, to the Legal Services Board’s consultation on the Levy.

My views in relation to the specific questions in the consultation paper are as follows:

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

I support the LSB’s definition of fair principles as set out in the consultation paper. My main observation would be that the rules when defined must consider new Approved Regulators and should not hinder their entry particularly when Alternative Business Structures are allowed.

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?

I agree that the detailed mechanisms for the collection of the levy should be agreed with each Approved Regulator, and covered by a Memorandum of Understanding (MoU). With regard to the content of the MoU for each Approved Regulator these should include the risk of late payments and any penalties that might be incurred as a consequence.

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

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

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

I have grouped these three questions together as they relate to the timetable you propose for the levy, which I would support.

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?

It appears sensible to even out the burden of the implementation and running costs for the LSB and the implementation costs of the OLC. I would also encourage the LSB to take account fully any concerns expressed by the Approved Regulators, particularly the smaller ones on whom this may have a more significant impact.

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?

I agree that metrics will take time to develop, but this should be considered as an appropriate approach for the levy in the future particularly as the potential risks become more evident.

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 to March 2010?

Again I agree with the LSB's assessment, but as with the previous question it should be explored for its potential use in the future.

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?

I am aware that the figures quoted in your consultation paper relate to those shown in your draft Business Plan and in some cases relate to membership from 2007. The numbers presently available publicly for each of the Approved Regulators do differ significantly in some instances. Comparing the public information against your paper shows:

- As at 31 July 2008, there were 139,666 solicitors on the Roll
- 112,433 of these hold practising certificates
- the remaining 27,233 include solicitors working in jobs in which they are not required to hold a practising certificate, retired solicitors and those no longer pursuing a career in the legal profession

(Trends in the solicitors' profession Annual Statistical report 2008 - The Law Society)

Law Society 108,407 in the consultation paper

- At December 2008, there were approximately 16,455 practising barristers
(Annual Statistics - 2008 as of December 2008 - The General Council of the Bar)
Bar Council 15,030 in the consultation paper

Elsewhere in the legal services sector there are approximately:

- 24,000 members of the Institute of Legal Executives (ILEX website - June 2009)

ILEX 7488 in the consultation paper

- 1,022 licensed conveyancers (CLC on-line Directory - June 2009)

CLC 1034 in the consultation paper

- The Institute of Trade Mark Attorneys has approximately 500 practising members. It extends associate membership to professionals in related fields of law, to students and to foreign trade mark attorneys. Its total membership is therefore about 1,600 (*ITMA website - June 2009*)

ITMA 844 in the consultation paper

- The Chartered Institute of Patent Attorneys represents virtually all the 1,730 registered patent attorneys in the United Kingdom, whether they practise in industry or in private practice. Total membership is over 3,000 and includes trainee patent attorneys and other professionals with an interest in intellectual property matters (CIPA website - June 2009)

CIPA 1782 in the consultation paper

Whilst some of these differences are small and could be accounted for by timing, others appear more significant and could affect the overall costs for each authorised person. It is, therefore, sensible to have a consistent method of calculating membership and a consistent date on when this is measured. I feel each Approved Regulator would be better placed to comment on an appropriate date for them. But I do consider that a single fixed date to determine the membership covering all Approved Regulators would help ensure the costs are apportioned correctly.

I also feel that the number of authorised persons who conduct reserved legal services should be a factor the LSB considers. Depending on the Approved Regulator, different proportions of their membership may conduct the services covered by the LSB and, where possible, some account should be taken of this when determining the apportionment the levy amongst them.

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

Under the Impact Assessment part of the consultation paper, you cover the risk associated with smaller Approved Regulators who have a membership that could give advice in their particular field without coming under any regulatory regime. You rightly say that they may see the burden of additional costs as unwelcome, and may choose

to end their membership of the Approved Regulator as a consequence. Although you assess that the costs defined in the paper are small and therefore the risk is minimal, I do believe this is an area where the LSB needs to take account fully of the views of Approved Regulators potentially affected by this.

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?

I agree with the LSB's assessment that the number of authorised persons is not a suitable approach to the apportionment of the OLC's implementation 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?

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?

I agree with the costs being apportioned on the number of complaints generated, but would caution that complaints are counted in a consistent way. A significant proportion of the costs of the Legal Complaints Service relates to the servicing of enquiries. Such a significant cost, which the OLC would need to consider as part of its implementation costs, may not be reflected in the same proportion in other Approved Regulators. The LSB should look to determine a fair and consistent method of counting to ensure the costs are proportionate to the actual number of complaints or enquiries generated.

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

Your paper has set out a simple, fair and not an unexpected approach to the levy in the short-term. It also looks at alternatives to the collection of the levy for the future, which do not appear appropriate in the short-term. As we look to the medium-term, I feel that the effects of the levy, particularly on smaller Approved Regulators, should be monitored and account taken of their concerns to ensure that appropriate changes are made in a timely manner.

I hope you find my comments helpful and I look forward to the LSB's conclusions following the consultation period.

*Best wishes,
yours ever,
Zahida.*

ZAHIDA MANZOOR CBE