

Review of the levy rules

A consultation issued by the Legal Services Board and the Legal Ombudsman

Comments from ACCA

February 2014

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We support our 162,000 members and 428,000 students in 173 countries, helping them to develop successful careers in accounting and business, with the skills needed by employers. We work through a network of over 89 offices and centres and 8,500 Approved Employers worldwide, who provide high standards of employee learning and development.

ACCA works in the public interest, assuring that its members are appropriately regulated for the work they carry out, and promoting principles-based approaches to regulation. We actively seek to enhance the public value of accounting in society through international research and we take a progressive stance on global issues to ensure accountancy as a profession continues to grow in reputation and influence.

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RESPONSE

ACCA welcomes the opportunity to comment on the proposals issued by the Legal Services Board and the Legal Ombudsman. We note that, if approved, the amended levy rules will apply from the 2014/15 collection year. We also note the objective stated in the first paragraph of the introduction to the consultation: that the review of the levy rules is to determine whether they are in line with the 'better regulation principles'.

The consultation paper states that it has been preceded by discussion with representatives of some of the approved regulators, and goes on to clarify that the proposals have been discussed with representatives of approved regulators that already have approved regulatory arrangements in place. Therefore, it is worthy of note that the views of the two approved regulators that might be most affected by future amendments to the rules (namely ACCA and ICAS) were not sought prior to the issue of the formal consultation.

CONSULTATION QUESTIONS

1. Do respondents agree that a 'do nothing approach' (that is not to change the current methodology for recouping the expenditure of the LSB) is the correct option at this time?

We acknowledge the claim that there may not be a practical basis on which a risk-based approach to apportionment of costs could be implemented. Nevertheless, it should be acknowledged that there are several factors that affect the demands placed upon the LSB by different approved regulators.

Different legal activities attract different levels of risk. Furthermore, some of the approved regulators only authorise (or intend to authorise) their members to perform a single reserved legal activity. (In the case of probate, this is considered to be low risk.¹) Therefore, we believe that the lesser risk attaching to the limited activities of some approved regulators is a factor that should not be ignored.

¹ This appears to have been the conclusion of the LSB when it decided not to recommend that estate administration should be included within the list of reserved legal activities.

2. Do respondents agree that levying a fixed fee for new (or ICAS and ACCA) who have regulatory arrangements approved during a year (1 April to 31 March) is a proportionate approach?

We welcome the clear statement, within paragraph 21 of the consultation document, that to apply a minimum fee to all approved regulators, regardless of whether they have any authorised persons, would be disproportionate, and contrary to the better regulation principles.

In principle, we would agree with the proposal suggested under paragraph 23 of the consultation document - that in the year in which an approved regulator has its regulatory arrangements approved, it would be charged a fixed fee levy for that year e.g. £3,000. Our understanding is that this amount is irrespective of the number of individuals authorised during that first year, although paragraph 23 appears to suggest an additional charge should the number of authorised individuals exceed 120. The draft statutory instrument is silent on this point.

3. Do respondents agree that using an average of complaints for a three year period, initially ending 31 March 2014, is the most appropriate methodology for recouping the leviable expenditure of the OLC?

We would agree that this is an appropriate methodology, as it appears to meet the better regulation principles.

4. Do respondents agree that all approved regulators who have regulatory arrangements approved, should pay a minimum contribution of £5,000 towards the costs of the Legal Ombudsman and the balance would then be apportioned as in question 3?

The set-up costs of the Legal Ombudsman were incurred some years ago, and it would appear unreasonable to seek to recover those costs from those approved regulators that had no authorised members during the intervening period (since 2010). Consistent with the LSB's conclusions referred to under 2 above, a fixed fee of £5,000 to be paid by all approved regulators annually would be disproportionate, and contrary to the better regulation principles.

Furthermore, where authorised persons engage only in legal activities that are considered to be relatively low risk, it may be argued that they (and their governing bodies) derive little benefit from the establishment of the Legal Ombudsman service. Therefore, should the fixed fee be payable by all those approved regulators that have regulatory arrangements approved, regardless of the demands placed on the Legal Ombudsman service by members of those

approved regulators, a claim may still be made that the arrangements are disproportionate and not appropriately targeted.

CONCLUSIONS

It is cause for concern that, although the majority of approved regulators were consulted prior to the issue of this formal consultation, ACCA and ICAS – the two approved regulators potentially to be adversely affected by the changes – were not among them. However, our comments within this response document are not solely with regard to the interests of our members, as ACCA has high regard for its public interest responsibility. Our concerns centre around access to legal services and the better regulation principles.

