



Bar Council response to the Legal Services Board's Review of the levy rules consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Services Board's consultation paper entitled Review of the levy rules: Consultation on the proposed amendments to the levy rules made under sections 173-174 of the Legal Services Act 2007.¹
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.
4. This response has been prepared on behalf of the Bar Council in its capacity as Approved Regulator for the Bar of England and Wales.

Overview

5. The Bar Council finds that the proposed amendments as set out in the consultation paper are appropriate and in line with the 'better regulation principles' i.e. transparent, accountable, proportionate, consistent and targeted.
6. As in its response to the 2009 levy consultation, the Bar Council remains of the view that the costs of the Legal Services Board (LSB) should be apportioned based on the number of authorised persons (APs) but that equal recovery of the costs of the Legal Ombudsman would be unfair and disproportionate. On that basis, the Bar Council supports the proposals as stated.

¹http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/lsb_review_of_levy_rules_consultation_181213.pdf

7. The Bar Council notes that the consultation “exclusively concerns the methodology for recouping leviable expenditure of the LSB and the OLC for leviable bodies” and recognises that the LSB do not seek, through this consultation, comment on their overall expenditure. The Bar Council will instead address these points through the LSB’s current consultation on the draft business plan 2014/15.

8. It is also noted that the proposals contained in the consultation, if approved, will be effective from 1 April 2014.

Question 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?

9. The Bar Council takes the view that a system of recovery based on the total number of APs across a regulated sector is proportionate, fair and transparent. It agrees that it would, however, be disproportionate to enforce the payment of a minimum fee on all ARs, irrespective of whether they regulate any persons.

10. On this basis, the Bar Council supports the ‘do nothing approach’ outlined, although would suggest that the label (‘do nothing’) does not adequately reflect what will in fact be a continuing period of assessment and review.

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

11. In 2009, the Bar Council expressed mild concern relating to costs borne by the LSB in relation to preparing for new leviable bodies being brought under its umbrella and what resources are necessary to be able to regulate an AR, regardless of whether or not they have anybody carrying out reserved legal services. Ongoing running costs are not necessarily related to the number of APs. It was therefore suggested that there must be a cost associated with being an AR that is incurred by the LSB and which, whether the AR has any regulated persons or not, should be passed to the AR to pay. The Bar Council asked that this be considered with care.

12. The Bar Council feels that the proposed levy for new ARs (or ICAS or ACCA) who have regulatory arrangements approved during a year (1 April to 31 March) is a proportionate approach, although it would perhaps be more proportionate in the case of those existing ARs to apply the levy to any *application* for amendment to their regulatory rules, regardless of whether or not it is successful.

13. It is not entirely clear how the rate of the proposed fixed fee (£3,000) has been reached. Agreement for this proposal is also only given in principal and the Bar Council would wish to be consulted further should there be any amendment to this rate.

14. The Bar Council would also request that this fixed sum is revisited in a future consultation or review where data is available to demonstrate the actual cost to the LSB of any approved regulatory arrangements by any such AR during the intervening period.

Question 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?

15. The Bar Council has formerly taken the stance that the costs of the OLC should be borne by the 'proven polluter', not on the basis of unproved service complaints.

16. The consultation uses the expression "accepted complaints", but no definition is provided as to what this means in practise. Does this mean a proven complaint or one which has passed an initial assessment before a full investigation? The Bar Council supports the targeted approach of using actual numbers, but would appreciate clarification as to what they are actual numbers of.

17. Using an average of three years' data in order to 'smooth out' any sudden or one-off peak in complaints is a welcome proposal, as is the continuous rolling-over of the referencing period.

Question 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?

18. The assertion in the consultation paper is that the Legal Ombudsman exists for the benefit of the ARs, irrespective of whether or not they actually have any complaints registered against them. The benefit in question must surely be that each AR is not responsible for investigating complaints made against their own APs. The wider benefit is, of course, to the consumer.

19. The consultation paper is not entirely clear as to whether, as at question 2, the proposal relates to those who have regulatory arrangements approved in the course of a particular year, or just have regulatory arrangements at all. It is also unclear how the figure of £5,000 has been reached.

20. Notwithstanding that, the Bar Council supports the idea that those ARs *with regulated persons* should contribute a minimum amount towards the costs of the Legal Ombudsman. The rationale for apportioning the remaining costs appears sound.

21. Again, it is not entirely clear how the value of the minimum contribution has been reached. The Bar Council would also request that this fixed sum is revisited in a future consultation or review where further data is available.

Additional points

22. The consultation helpfully provides forecast projections for the impact of the amendments on the 2014/15 levy. The Bar Council would welcome anticipated projections beyond the next financial year – where data is available – so as to assist with its budget-setting process, which is predicated on a three-year forecast.

23. Further information regarding what steps the LSB will take to manage the transition between the current and future basis where these changes result in significant changes in recharges for individual ARs would be welcomed.

Bar Council²
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² This response represents that of the Bar Council as the Approved Regulator of the Bar of England and Wales.