

LEGAL SERVICES

31 JAN 2014

BOARD

Consultations  
Legal Services Board  
7<sup>th</sup> Floor, Victoria House  
Southampton Row  
London WC1B 4AD

29 January 2014

## Consultation: LSB review of levy rules

Dear Sirs,

We write further to the above consultation paper dated 18 December 2013.

As regards Question 1, the LSB has not provided any methodology behind how the £3,000 fixed fee has been arrived at, this lack of transparency is unacceptable.

We find the subsequent questions too restrictive and therefore respond in general terms. Further, in our view inaccuracies and incorrect methodology brings the validity of this consultation into question.

The CLSB considers that the proposal is neither fair nor proportionate, that it lacks transparency and is against the Principles of Better Regulation as:

- (i) It penalises success e.g. low complaint rates in the case of the CLSB.
- (ii) It is discriminatory as it financially penalises the smallest of the AR's.
- (iii) The consultation presents no justification for imposing a near five times increase in OLC cost on the CLSB.
- (iv) The consultation states *"The LSB is aware that a minimum amount would increase the levy for the smallest existing approved regulator, Costs Lawyers Standards Board (CLSB) but doesn't consider this level of fee a barrier to new entrants."*

This is strenuously denied by CLSB. The CLSB has, through sound financial management, kept its regulatory fee at the same level for three consecutive years so as not to price Costs Lawyers out of regulation. The proposal will

potentially do just that. As the LSB is well aware, there are many challenges making the current climate financially difficult for practitioners e.g. austerity, changes to legal aid. There is simply no justification for an OLC cost increase from £1,118 (consultation Table 1) to £5,000 (consultation Table 3) an increase of nearly fivefold. The proposal does not reflect well on the LSB/OLC/LeO, particularly when Costs Lawyers have created no LeO complaints since 31 October 2011.

- (v) Any increase in costs will ultimately have to be passed on to Costs Lawyer consumers which we consider both unfair and unjustified.
- (vi) It is divisive in that it serves to put more pressure on the sustainability of the smaller regulators.
- (vii) The method behind how the £5,000 minimum payment was arrived at was not explained, it appears to be a figure plucked from the air. This lack of transparency is not acceptable.

#### **Inaccuracies in consultation paper which we believe lead it to be invalid**

- (i) There appears to be a calculation error in Table 2, the second number column does not add up to £13,150,000. The error appears to be in the Law Society amount in Table 2.
- (ii) Table 2 indicates 1 Costs Lawyer complaint during the 3 year period 30 September 2010 to 30 September 2013.

30 September 2010 to 31 October 2011 (pre CLSB acting as AR)  
We believe there were no Costs Lawyer complaints.

31 October 2011 to 30 September 2013 (period CLSB acted as AR)  
CLSB are of the view there were no Costs Lawyer complaints during this period and LeO provided written reports up to March 2013 confirming this.

In January 2014 we contacted LeO about this alleged 1 complaint and were advised informally that *"I don't think you have had any complaints, but I will let you know formally asap"*.

On 27 January 2014 we were then advised LeO had overlooked a Costs Lawyer complaint filed July 2012, closed November 2012 as being without foundation.

On 28 January 2014 we were able to establish the "overlooked" 2012 complaint was (i) not against a Costs Lawyer, and (ii) that the person complained of was not employed by a regulated firm. The statistic for Costs Lawyer complaints for the 3 year period 30 September 2010 to 30 September 2013 should therefore be 0, and not 1 on which the calculation has been made.

- (iii) There appears to be a calculation error in Table 3, the first number column does not add to 8,171, it actually adds to a rounded 8,156 (actual 8,156.32).
- (iv) There appears to be a further calculation error in Table 3, the second number column does not add up to £13,150,000. It actually adds up to £13,165,001.

### Questionable methodology

- (i) Under Table 3, taking the methodology set out in para 37 of the consultation document the proposed calculation basis is not clear – *‘an amount equivalent to £5,000 multiplied by the number of approved regulators who have approved regulatory arrangements would be deducted from the total amount payable by the remaining approved regulators who had an average number of three or less complaints.’*

Interpreting this as being all ARs pay the £5,000 for the first 3 cases. Those ARs with 3 or less only pay the £5,000 and the total remaining cost is then divided on case load amongst the remaining ARs. The total payable by an AR is therefore £5,000 + any apportionment above the minimum 3 cases. This is consistent with the average number of complaints being reduced by 3 across all ARs in the calculation. Attached is a spreadsheet that reflects this calculation method – it does not generate the same figures as the numbers in Table 3. (See attached spreadsheet.)

Even interpreting the proposal that an AR either pays £5,000 (if 3 or less cases) with the number of these ‘3 or less case ARs at £5,000 per case being deducted from the total cost and the remaining ARs paying on a per case basis does not result in the figures given in Table 3. (See attached spreadsheet).

Even if this is the intended approach the absolute number of cases for the ARs with greater than 3 cases should not have been reduced – the absolute cases should have been used.

The average costs per case using Tables 2 & 3 are:

AR	Cases	Cost (£)	Average Cost (£)
Law Society	7,739.33	12,472,873	1,611.62
General Council of the Bar	279.33	445,512	1,594.93
Chartered Institute of Legal Execs	0	5,000	5,000.00
Council of Licensed Conveyancers	139.33	219,798	1,577.53
Intellectual Property Board	10.33	11,818	1,144.05
Faculty Office	2.33	5,000	5,000.00
Costs Lawyer Standards Board	0.33 <i>(incorrect statistic should actually be 0)</i>	5,000	5,000.00

The Intellectual Property Board (IPB) figure of £1,144.05 reinforces that the LSB method of calculation in Table 3 is flawed.

The CLSB with an alleged 0.33 complaints, we say it is actually 0, either way is required to pay £5,000 yet the IPB with 10.33 complaints is required to pay £1,144.05. It seems therefore that the proposal rewards failure and makes it financially beneficial for a profession to generate more complaints.

### **In conclusion**

The consultation is flawed in that it:

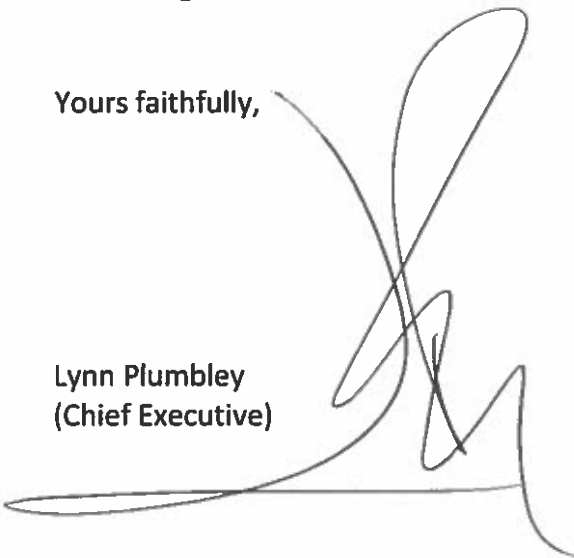
- lacks transparency, and
- is based on flawed and inaccurate information.

The CLSB has no objection to a three year reference period ending 31 March 2014 but does however oppose any proposal for a minimum contribution as it is:

- unfair,
- not proportionate,
- without justification,
- penalises success,
- discriminatory, and
- against the Principles of Better Regulation in that it will serve as a barrier to access to the Costs Lawyer profession and potentially decrease the numbers opting to be regulated.

Yours faithfully,

Lynn Plumbley  
(Chief Executive)

A handwritten signature in black ink, appearing to be 'Lynn Plumbley', written over a horizontal line. The signature is stylized and somewhat abstract, with a large loop at the top and a long horizontal stroke at the bottom.

Assumes all ARs pay £5,000 for the first 3 cases

Approved Regulator	First 3			LSB			
	Units	Units	Units	Unit cost	Cost	Total Cost	Table 3
	£	Net	£	£	£	£	£
Law Society	7,739.33	5,000.00	7,736.33	1,607.96	12,439,674.75	12,444,674.75	12,472,873.00
GCB	279.33	5,000.00	276.33	1,607.96	444,326.36	449,326.36	445,512.00
CILEX	0.00	5,000.00	0.00	1,607.96	0.00	5,000.00	5,000.00
CLC	139.33	5,000.00	136.33	1,607.96	219,212.58	224,212.58	219,798.00
IPRegB	10.33	5,000.00	7.33	1,607.96	11,786.31	16,786.31	11,818.00
FP	2.33	5,000.00	0.00	1,607.96	0.00	5,000.00	5,000.00
CLSB	0.33	5,000.00	0.00	1,607.96	0.00	5,000.00	5,000.00
	<b>8,170.98</b>	<b>35,000.00</b>	<b>8,156.32</b>		<b>13,115,000.00</b>	<b>13,150,000.00</b>	<b>13,165,001.00</b>

**Total Cost**

13,150,000.00

Less 7 x 5,000

-35,000.00

13,115,000.00

Per case = 13,115,000.00 / 8,156.32

1,607.96

Assumes that ARs with 3 or less pay £5,000 - then the remaining ARs share the remaining costs

Approved Regulator	First 3			LSB			
	Units	Units	Units	Unit cost	Cost	Total Cost	Table 3
	£	Net	£	£	£	£	£
Law Society	7,739.33	5,000.00	7,736.33	1,610.41	12,458,644.90	12,458,644.90	12,472,873.00
GCB	279.33	5,000.00	276.33	1,610.41	445,003.94	445,003.94	445,512.00
CILEX	0.00	5,000.00	0.00	1,610.41	0.00	5,000.00	5,000.00
CLC	139.33	5,000.00	136.33	1,610.41	219,546.87	219,546.87	219,798.00
IPRegB	10.33	5,000.00	7.33	1,610.41	11,804.29	11,804.29	11,818.00
FP	2.33	5,000.00	0.00	1,610.41	0.00	5,000.00	5,000.00
CLSB	0.33	5,000.00	0.00	1,610.41	0.00	5,000.00	5,000.00
	<b>8,170.98</b>	<b>15,000.00</b>	<b>8,156.32</b>		<b>13,135,000.00</b>	<b>13,150,000.00</b>	<b>13,165,001.00</b>

**Total Cost**

13,150,000.00

Less 3 x 5,000

-15,000.00

13,135,000.00

Per case = 13,135,000.00 / 8,156.32

1,610.41