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Michael Mackay  
Legal Services Board  
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13 February 2014

Dear Mr Mackay

**Consultation on the proposed amendments to the levy rules made under sections 173-174 of the Legal Services Act 2007 issued 18 December 2013 (Consultation)**

On behalf of the Tunbridge Wells, Tonbridge & District Law Society (**Society**) I present the response of its Regulatory Committee (**Committee**) to the Consultation. The Committee is comprised of members all of whom have considerable expertise and professional experience in regulatory matters.

The Society represents Solicitors and other lawyers who practise or live in the counties of Kent and East Sussex. The law firms to which the Society's members belong advise a variety of clients including individuals, multi-national companies, trustees, financial institutions, microenterprises, small and medium sized enterprises, and consumers of legal services of many kinds in all manner of civil and criminal legal and regulatory issues.

The Committee regularly responds to consultations issued by the Legal Services Board (**LSB**), the Solicitors Regulation Authority (**SRA**), the Legal Ombudsman, and other bodies.

**1. The work of the LSB**

- 1.1 The LSB is the oversight regulator of Approved Regulators, including the Law Society of England and Wales (**the Law Society**), which through the SRA, regulates practicing Solicitors and providers of legal services authorised as 'alternative business structures' in England and Wales.
- 1.2 The LSB has a statutory relationship with the OLC, the Board of the Legal Ombudsman. This includes a responsibility to review its performance in administering the Legal Ombudsman scheme.

- 1.3 Of the approximately 168,000 authorised lawyers in England and Wales the vast majority are admitted as Solicitors by the Law Society and authorised by the SRA. Only 17.5% of authorised lawyers are not regulated by the SRA.
- 1.4 The LSB is also the oversight regulator of the following Approved Regulators:
  - 1.4.1 The General Council of the Bar, which through the Bar Standards Board, regulates around 15,300 practicing barristers;
  - 1.4.2 The Chartered Institute of Legal Executives, which through ILEX Professional Standards Limited, regulate around 7,900 practicing fellows;
  - 1.4.3 The Council for Licensed Conveyancers, the regulator of over 1,170 practicing licensed conveyancers and 38 alternative business structures;
  - 1.4.4 The Chartered Institute of Patent Attorneys, which through the Intellectual Property Regulation Board, regulate around 1,980 practicing chartered patent attorneys;
  - 1.4.5 The Institute of Trade Mark Attorneys, which through the Intellectual Property Regulation Board, regulate around 820 practicing trade mark attorneys;
  - 1.4.6 The Association of Costs Lawyers, which through the Costs Lawyer Standards Board, regulate over 560 practising costs lawyers;
  - 1.4.7 The Master of the Faculties who regulates over 800 notaries;.
  - 1.4.8 The Association of Chartered Certified Accountants (ACCA); and
  - 1.4.9 The Institute of Chartered Accountants of Scotland (ICAS).
- 1.5 ACCA and ICAS are designated as Approved Regulators for reserved probate activities only, but neither ACCA nor ICAS has any members offering those services at present.
- 1.6 The LSB does not have an oversight function in relation to either the Law Society of Scotland nor the Law Society of Northern Ireland.
- 1.7 There are eight regulatory objectives for the LSB that are set out in the Legal Services Act 2007:
  - 1.7.1 protecting and promoting the public interest;
  - 1.7.2 supporting the constitutional principle of the rule of law;
  - 1.7.3 improving access to justice;
  - 1.7.4 protecting and promoting the interests of consumers;
  - 1.7.5 promoting competition in the provision of legal services;
  - 1.7.6 encouraging an independent, strong, diverse and effective legal profession;
  - 1.7.7 increasing public understanding of the citizen's legal rights and duties;

- 1.7.8 promoting and maintaining adherence to the professional principles as set out in section 1(3) of the Act:
- (a) independence and integrity; proper standards of work;
  - (b) observing the best interests of the client;
  - (c) the duty to the court to act with independence in the interests of justice; and
  - (d) maintaining client confidentiality.
2. **The existing Levy rules**
- 2.1 The running costs of the LSB are levied on Approved Regulators and passed on to members of the legal profession as an element of the practising certificate fee.
- 2.2 The LSB has stated elsewhere that its budget for 2014/15 is £4,298,000.
- 2.3 The LSB has three strategic priorities for 2012-15:
- 2.3.1 assuring and improving the performance of Approved Regulators;
  - 2.3.2 helping consumers to choose and use legal services;
  - 2.3.3 helping the changing legal sector to flourish by delivering proportionate regulation to address risks.
- 2.4 In that context, the LSB have chosen primarily *to promote equality and diversity, including developing a diverse workforce across the legal sector*<sup>1</sup>.
- 2.5 Sections 173-174 of the Act requires the LSB to meet all its (**LSB Leviable Expenditure**), and the OLC's leviable expenditure (**OLC Leviable Expenditure**) through a levy on the Approved Regulators.
- 2.6 The Legal Services Act 2007 (Levy) (No.2) Rules 2010<sup>2</sup> sets out the current rules for leviable expenditure (**Rules**).
- 2.7 Section 174(4) of the Act allows for different parts of the levy to be payable at different rates. The LSB proposes to continue the current distinction between LSB Leviable Expenditure and OLC Leviable Expenditure. The methodology for recouping its costs will be different to the one used to recover the leviable expenditure of the OLC.
- 2.8 The LSB Leviable Expenditure is apportioned on the basis of the number of authorised persons regulated by each Approved Regulator.
- 2.9 The Consultation states<sup>3</sup> that applicants for approval as a regulator pay a fee of £22,000, and this fee is offset against the general amount recouped from all Approved Regulators.

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<sup>1</sup> The LSB Draft Business Plan 2014/15 published 5 December 2013.

<sup>2</sup> SI 2010 No. 2911.

<sup>3</sup> Para 20.

2.10 The LSB states that it *has reduced its costs since its inception in 2009, and the total numbers of practitioners has gradually increased over this period the approximate amount attributable to each authorised person for LSB leviable expenditure has reduced from in the region of £34 to £25.31 for 2013/14.*

2.11 The OLC Leviable Expenditure is apportioned on the basis of the average number of complaints accepted by each Approved Regulator in the three-year period ending 31 December 2009, ie before the introduction of the Legal Ombudsman scheme.

### 3. **Consultation**

3.1 The Consultation outlines the amendments the LSB proposes to make to the Rules. There are four proposed changes:

3.1.1 a minimum contribution of £3,000 for all Approved Regulators in respect of LSB Leviable Expenditure;

3.1.2 in respect of OLC Leviable Expenditure:

(a) to use a three-year reference period initially ending 31 March 2014 to calculate the average number of complaints and the end date being rolled forward one year for each levy period;

(b) to use actual data captured by the OLC to determine the levy payable by each approved regulator instead of historic complaint information to recoup their leviable expenditure – currently the costs of the Legal Ombudsman; and

(c) to require a minimum contribution of £5,000 for OLC leviable expenditure from all Approved Regulators who have approved regulatory arrangements.

3.2 The Consultation was published by the LSB on 18 December 2013, and full details are set out there<sup>4</sup>.

3.3 The LSB states that it is consulting on its review the Rules to determine whether they are still appropriate and in line with the ‘better regulation principles’, ie are they:

3.3.1 transparent;

3.3.2 accountable;

3.3.3 proportionate;

3.3.4 consistent; and

3.3.5 targeted.

3.4 The Consultation exclusively concerns the methodology for recouping LSB Leviable Expenditure and OLC Leviable Expenditure from Approved Regulators. Section 173(5)(b) of the Act also includes as a leviable body the person designated under

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[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/pdf/lbsb\\_review\\_of\\_levy\\_rules\\_consultation\\_181213.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/lbsb_review_of_levy_rules_consultation_181213.pdf)

section 51(1) of the Compensation Act 2006 (the regulator in relation to claims management services). If a person is so designated then the Rules and the apportionment of the LSB's running costs would be subject to a further amendment.

**4. Amending the Rules in respect of LSB Leviable Expenditure**

4.1 The Committee agrees with the proposal that there is no evidence in the Consultation to favour a change to the current calculation of the proportion of the LSB Leviable Expenditure payable by each Approved Regulator.

4.2 The Committee is of the view that if the LSB is not engaged in any supervisory work in connection with an Approved Regulator then no charge should be levied.

4.3 The Committee agrees with the proposal that a basic charge should be made where an Approved Regulator has regulatory responsibilities in respect of any authorised persons. The amount of any such basic charge should reflect the reasonable management costs to the LSB.

**5. Amending the Rules in respect of OLC Leviable Expenditure**

5.1 The Committee agrees with the proposal that using an average of complaints for a three year period, initially ending 31 March 2014, is the most appropriate methodology for recouping the OLC Leviable Expenditure.

5.2 The Committee agrees with the proposal that all Approved Regulators with newly approved regulatory arrangements should pay a minimum contribution towards the OLC Leviable Expenditure and that such sum should be on account of the general calculation of contributions thereafter.

I trust this is helpful.

Yours sincerely

Martin Varley

**Martin Varley**  
**Chairman**