

SRA response

"The Levy: funding legal services oversight regulation", Legal Services Board/Legal Ombudsman consultation

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Introduction

1.

The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales . We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors' firms and their staff.

2.

We welcome the opportunity to take part in this consultation, and have set out some comments below.

SRA comments

Q1. Do respondents agree that the LSB's levy should be calculated on the estimated leviable expenditure and paid by 31 March 2011?

3.

We have no objection to this proposed approach as a means of calculating the 2011 leviable costs required by the Legal Services Board (LSB). However, we agree that the LSB is right (at paragraph 3.13 of the consultation paper) to commit to annually reviewing the arrangements it uses for calculation, and to then undertake a fundamental review in 2013-14 that can consider factors including the emergence within the legal services market in England and Wales of alternative business structures.

Q2. Do respondents agree that the Legal Ombudsman's levy should be calculated on the estimated leviable expenditure and paid by 31 March 2011?

4.

Similarly to our comments above, we have no objection to the proposed approach for calculation of the Legal Ombudsman's first levy, but strongly support the commitment for levy arrangements to be assessed annually to ensure they remain robust and fit-for-purpose.



Q3. Do respondents consider the risk-based approach is the most appropriate way of calculating the levy? If yes, can you suggest ways in which the risk for each Approved Regulator could be easily calculated and verified without adding additional cost burdens to the LSB, ARs and individual regulated entities and individuals?

5.

Calculating the levy based on a risk profile for each Approved Regulator may well prove to be the most appropriate approach in the longer term; certainly we agree that this approach would be consistent with the principles of better regulation, in terms of acting proportionately given the circumstances of each Regulator.

6.

However, the LSB is right to conclude at paragraph 4.6 that it would first "... need to obtain detailed understanding of the operations of each Approved Regulator..." in order to develop a risk profile as a basis for levy calculations. Greater knowledge and understanding of, for example, the SRA's operations could only come about as a result of continued and ongoing exposure to those operations. While it is the case that the LSB has worked with the SRA on various matters and applications made under the Legal services Act 2007 since it became fully operational in January 2010, there is in reality still some way to go before the LSB might find itself in a position to construct a robust risk profile based on a profound understanding what we do and how we do it.

7.

Our view therefore is that over time the LSB will, through the very nature of its work, continue to become more informed about the Approved Regulators and more versed in understanding their operations, and in this way risk knowledge will emerge to make a future risk-based approach for levy calculation more viable. We would add that we support the LSB's proposal (at paragraph 4.12 of the consultation paper) to consider a risk-based approach again in more detail once the mechanisms for establishing alternative business structures in the legal services market are in place.

Q4. Do respondents consider the volume of activity generated by each Approved Regulator approach is the most appropriate way of calculating the levy? If yes, can you suggest ways in which we could easily and accurately apportion the current costs of our activities



with the future benefits and/or work future arising from our activities?

8.

We note the disadvantages identified in the consultation paper with pursuing this approach, not least of which the potential for a levy introduced in this way to potentially have greater impact on the regulated communities of smaller Approved Regulators. We would not therefore agree that basing the LSB's levy on the volume of activity created by each Approved Regulator is a viable option at this time, although it should be re-explored as part of future reviews carried out by the LSB.

Q5. Do respondents consider the number of authorised persons per Approved Regulator approach is the most appropriate way of calculating the LSB's levy?

9.

We note the LSB's statement at paragraph 4.25 of the consultation paper, that it "...considers that how an individual Approved Regulator recoups the costs of the levy from the regulated community they serve would be entirely up to them...". We agree that using the number of Authorised Persons as the basis for calculating each Approved Regulator's levy provides flexibility for individual Regulators to take forward their own policies in this regard, and does not create the potential to disproportionately impact any particular profession within the legal services market in the same way that the other levy options may.

Q6. Do respondents consider levying on the numbers of authorised persons per Approved Regulator is the most appropriate way of recovering the Legal Ombudsman's leviable costs?

10.

As the consultation paper makes clear, recovering the Legal Ombudsman's costs in correlation to numbers of authorised persons, but in isolation of complaint numbers, is not the most appropriate option.

Q7. Do respondents consider that there are more appropriate ways to estimate the likely number of service complaints and/or cases during the first few years of the Legal Ombudsman's operation (that is, the period from the anticipated commencement in late 2010 to approximately 2013)?

11.



We agree that it is sensible to calculate the Legal Ombudsman's initial costs using existing complaints data held by Approved regulators. Once fully operational, it will be essential for the Legal Ombudsman to review this approach alongside the LSB and the Approved regulators, to ensure the levy calculation process remains proportionate to the caseload actually being incurred by the Legal Ombudsman.

Q8. Do respondents consider that levying specific Approved Regulators for costs attributable to them above a given threshold is the most appropriate way of recovering costs that are beyond the "business as usual" costs? If yes, can you suggest how such a threshold should be calculated and/or what its level should be? If no, can you suggest ways in which these costs should be cost-recovered?

12.

From a regulatory perspective, we do not have a particular view at this stage regarding the threshold for calculating 'business *not* as usual' costs incurred by the Legal Ombudsman. However we wholly support the proposal set out at paragraph 6.14 of the consultation paper, namely that *"they (LSB or Legal Ombudsman) will discuss with the Approved Regulator and take their views into consideration before deciding what, if any, additional levy will be imposed."* Adopting a case-by-case approach to agreeing any additional Ombudsman costs, taking in the views of other Approved Regulators and other relevant stakeholders where appropriate, will ensure a transparent and proportionate approach to agreeing the level and nature of any such costs.

Q9. What are your views on the proposed approach for the cancellation of designation of an Approved Regulator?

13.

In the interests of ensuring effective consumer protection and redress it is essential that the LSB and the Legal Ombudsman remain sufficiently resourced in the event that a particular aspect of an Approved Regulator's designation is cancelled. However we have no particular view regarding the proposed approach being put forward to support this.

Q10. What are your views on the proposed approach with regard to ensuring that 100 per cent of the levy is collected from all of the remaining Approved Regulators?

14.



We do not have any comments from a regulatory perspective on the proposed approach.

Q11. What are your views on the proposed approach with regard to the levy arrangements for new Approved Regulators?

15.

We have no comments regarding the proposed approach.

Q12. Is the proposed payment date (by 31 March) workable for Approved Regulators?

16.

We have no objections to the proposal, although would emphasise the importance of the commitment made at paragraph 7.1 of the consultation paper in "*...ensuring that the Approved Regulators are aware of the costs that they need to pay early enough so that they can incorporate those costs into their planning cycles for raising practising certificate fees.*"

Q13. Do the draft rules accurately reflect the preferred approach (as set out in the consultation paper)?

17.

We have no further comments on the draft rules.