

# The Levy: funding legal services oversight regulation

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*Consultation on the proposed rules  
(leviable operational expenditure) to be made  
under sections 173-74 of the Legal Services  
Act 2007*

**8 July 2010**

*The consultation period will end on Wednesday 29 September 2010*



## Contents

Chapter 1	Executive summary	Page 4
Chapter 2	Introduction	Page 8
Chapter 3	Approach for calculating the levy	Page 11
Chapter 4	LSB's leviable operational costs	Page 14
Chapter 5	OLC's (Legal Ombudsman) leviable operational costs	Page 19
Chapter 6	Apportioning and collecting the levy—specific scenarios	Page 23
Chapter 7	Timing for collecting the levy	Page 29
Chapter 8	Statutory instrument	Page 29
Chapter 9	Summary of all questions	Page 36
Chapter 10	Impact assessment	Page 38

## 1. Executive summary

- 1.1. The Legal Services Board (“LSB”) and the Office for Legal Complaints (“Legal Ombudsman”)<sup>1</sup> have been established to ensure the highest quality of regulation and complaints resolution within the legal profession and legal services industry for the benefit of consumers, citizens and the profession alike. The LSB and the Legal Ombudsman aim to work with the Approved Regulators and the profession to meet common future challenges. The Legal Ombudsman is being set up by the Office for Legal Complaints under Part 6 of the Legal Services Act 2007 (“the Act”) and is impartial in its decision making and independent of both the profession and the Approved regulators.
- 1.2. This consultation includes proposals from both the LSB and the Legal Ombudsman. This is because, although the LSB administers the levy under the Act, the majority of the levy will flow to the Legal Ombudsman to ensure effective redress in the legal services market.
- 1.3. In preparing the consultation paper, each organisation has developed their respective proposals. For the proposals that affect both organisations equally these have been developed jointly.
- 1.4. However, as the LSB is responsible for the levy overall, the LSB will decide the final outcome of the proposals. In doing, the LSB will take into consideration the Legal Ombudsman’s views, but the decision will remain with the LSB.
- 1.5. This consultation document sets out for comment the principles, including the preferred approach and the draft rules, for apportionment of all leviable expenditure for the operational costs of the LSB from 1 April 2010 onwards and the Legal Ombudsman once it commences operation later in 2010 and onwards.
- 1.6. The LSB’s preferred option is for its leviable costs to be calculated on a per capita basis. The annual costs levy will be based on the estimated operational costs as detailed in its finalised business plan.
- 1.7. The Legal Ombudsman’s preferred option is for its costs to be calculated on an average number of service complaints basis. The annual cost levy for the Legal Ombudsman will be based on the estimated operational budget in its finalised business plan. The Legal Ombudsman’s costs will be demand led and as such they may experience exceptional in year increases in cost due to increases in the volumes of complaints received. Any material implications of this will result in an adjustment to the levy. In such circumstances any shortfall may require grant-in-aid support to be provided by the Ministry of Justice prior to the adjustment payment being made.

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<sup>1</sup> Section 115(3) of the Act provides for the Office for Legal Complaints to operate its ombudsman scheme under a different name. The ombudsman scheme is referred to as “Legal Ombudsman”.

- 1.8. The LSB and Legal Ombudsman believe that these options provide a relatively straightforward way to apportion the costs in the absence of robust data sets and more sophisticated methodologies. In addition, these methodologies will generally be consistent with the way the levy for the establishment costs have been calculated for both the LSB and the Legal Ombudsman. In addition to proposing arrangements for the apportionment and collection of the levy during a “business as usual” financial year, the LSB, with the support of the Legal Ombudsman, is also seeking comment on a series of proposals that will cater for a range of scenarios. The LSB and the Legal Ombudsman consider that it is consistent with better regulation principles that they articulate how they intend to apportion and collect the levy where:
- an Approved Regulator’s behaviour generates disproportionate work to the LSB and/or the Legal Ombudsman;
  - an Approved Regulator’s designation is cancelled with regard to one or more, or all, of its reserved legal activities;
  - an Approved Regulator becomes bankrupt; and
  - the Lord Chancellor designates a new body to become an Approved Regulator.
- 1.9. The LSB and Legal Ombudsman consider that these proposals are proportionate and targeted, and believe that it is important that a consistent and transparent approach is adopted.
- 1.10. The LSB and the Legal Ombudsman intend to undertake an annual internal review of the practical arrangements including the proposals that affect each organisation equally, and to undertake a fundamental review of the options for the LSB and the Legal Ombudsman in 2013-14. This fundamental review will allow us to take account of any lessons learnt.
- 1.11. In addition, by then the Legal Ombudsman would have fuller data about the nature and origin of its casework and the revenue derived from case fees. Both are likely to assist in calculating and apportioning the leviable costs in the future. The LSB will also be able to reflect on the implications of the licensing of Alternative Business Structures and the moves by a number of Approved Regulators to levy an element of their charges on an entity as well as individual basis for future design of the levy.
- 1.12. A summary of the proposed and preferred options is as follows:

LSB leviable expenditure	LSB's preferred option (yes/no)?
<p><b>Option 1 – a risk-based approach</b>  This option attempts to quantify the likely detriment in terms of both degree of severity and breadth of impact if an Approved Regulator took actions that were contrary to the Regulatory Objectives as defined in the Act.</p>	No
<p><b>Option 2 – volume of activity generated by each Approved Regulator</b>  This option calculates the levy based on the volume of activity that is generated by each Approved Regulator in their fulfilment of their obligations under the Act and our engagement with them.</p>	No
<p><b>Option 3 - number of authorised persons regulated by the Approved Regulator</b>  This option apportions the costs of operating the LSB on a per capita basis, based on the number of authorised persons who hold practising certificates or are otherwise registered to carry out reserved legal activities with an Approved Regulator.</p>	Yes
Legal Ombudsman (OLC) leviable expenditure	LSB and Legal Ombudsman's preferred option (yes/no)?
<p><b>Option 1 – number of authorised persons regulated by each Approved Regulator</b>  This option apportions the costs of implementing the Legal Ombudsman on a per capita basis based on the number of authorised persons who hold practising certificates.</p>	No
<p><b>Option 2 – number of service complaints about authorised persons regulated by each Approved Regulator</b>  This option apportions the Legal Ombudsman's costs based on the number of service complaints about authorised persons that are regulated by each Approved Regulator over a fixed three-year period (1 January 2007 to 31 December 2009).</p>	Yes

Specific scenarios for the LSB and the Legal Ombudsman	LSB and Legal Ombudsman's preferred approach (yes/no)?
<p><b>Scenario 1 – Approved Regulator-specific costs</b>  This option proposes that for activities that the LSB and/or the Legal Ombudsman undertake that are “business <i>not</i> as usual” with regard to specific Approved Regulators that those costs will be levied on those Approved Regulators only.</p>	Yes
<p><b>Scenario 2 – Cancellation of designation</b>  This option proposes that if the cancellation of designation is in relation to all reserved legal activities, any unpaid amount should be paid in full at the time the cancellation order is made. The amount would be a pro-rata amount, which will reflect the time the Approved Regulator had its status before its designation was cancelled.</p> <p>However, if the cancellation is in relation to one or more, but not all, of the reserved legal activities in relation to which the “leviable body” is an Approved Regulator, any unpaid amount remains payable in accordance with the levy cycle.</p>	Yes
<p><b>Scenario 3 – Bankruptcy of an Approved Regulator</b>  This option envisages where an Approved Regulator experiences severe financial difficulties, such as bankruptcy, that the total cost of the levy will be recouped from the remaining Approved Regulators.</p>	Yes
<p><b>Scenario 4 – New Approved Regulators</b>  This option proposes where the Lord Chancellor designates a new body to become an Approved Regulator after 1 April of a given year that that Approved Regulator will only be required to pay its share of the leviable costs from the following year's levy onwards.</p>	Yes

## 2. Introduction

- 2.1 The LSB is required by Part 7 of the Act (specifically sections 173-175) to meet all its, and the OLC's (for the Legal Ombudsman), leviable expenditure through a levy on the Approved Regulators. The LSB will therefore make rules for all leviable expenditure, as defined in the Act, which includes relevant expenditure made by the LSB, OLC and the Lord Chancellor in respect to operational costs.
- 2.2 Section 174(4) of Part 7 of the Act allows for different parts of the levy to be payable at different rates. Accordingly, this paper will look at the broad principles for how the leviable costs for the LSB and Legal Ombudsman can be split between the different Approved Regulators (as defined in the Act).
- 2.3 By way of background, on 9 April 2009 the LSB published a consultation paper on a proposed methodology for the apportionment of all leviable expenditure for the establishment of the LSB and the OLC (which includes the Ombudsman scheme), and the operational costs of the LSB until the end of March 2010.<sup>2</sup> A Statutory Instrument, The Legal Services Act 2007 (Levy) Rules 2010, came into effect on 15 March 2010 to give authority to the LSB to collect the leviable expenditure from the Approved Regulators.<sup>3</sup>

### Business Plan 2010

- 2.4 The LSB's Business Plan, which was published in April 2010, outlines its key deliverables in relation to the levy for the end of the 2010-11 financial year, in particular we planned to have consulted widely during Spring 2010 to determine how to recoup the leviable operational costs of both the LSB and the Legal Ombudsman from the Approved Regulators in a way which is fair, practicable and avoids undue administrative burdens. The Legal Ombudsman will publish a new business plan in the Autumn of 2010.

### Structure of this paper

- 2.5 Section 205(2) of the Act requires the LSB to publish a draft copy of the rules. As such, the draft rules, which includes the LSB's and the Legal Ombudsman's preferred options, are set out in Chapter 8. Concurrent with the consultation process, the LSB, with the agreement of the Legal Ombudsman, will consult the Joint Committee on Statutory Instruments to ensure that the draft rules have been drafted properly. This is, of course, without prejudice to the Board's consideration of consultation responses before final decisions are reached.
- 2.6 Chapter 9 lists suggested questions which respondents may wish to answer. Respondents are also asked to consider if there are any options or matters that we have not raised in this paper.

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<sup>2</sup> The consultation paper can be accessed here:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/2009/pdf/consultation\\_on\\_the\\_levy.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/consultation_on_the_levy.pdf).

<sup>3</sup> The Statutory Instrument can be accessed here: [http://www.opsi.gov.uk/si/si2010/pdf/ukxi\\_20100213\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/ukxi_20100213_en.pdf).



## Proposed consultation timeline

2.7 We intend to work to the following timetable:

Timeline	Engagement
8 July 2010	Launch consultation. Publish consultation paper on the LSB's website and send it to stakeholder organisations.
8 July to 29 September 2010	Meetings with stakeholders about the proposals, if requested.
29 September 2010	End of formal consultation period – deadline for written submissions from stakeholders.
Late October 2010	Decisions on the policy and sign-off of the Statutory Instrument by the LSB.
November 2010	The LSB to submit the proposed rules to the Lord Chancellor. The levy rules to be laid before Parliament as a Statutory Instrument.
Late January to February 2011	Invoices are sent out to Approved Regulators.
By 31 March 2011	Levy collected and distributed between LSB and OLC (for the Legal Ombudsman).

2.8 The LSB will work with the Approved Regulators closely to ensure that what is being proposed is workable and has the minimum impact on their mechanisms and timings for collecting their practising certificate fees.

### How to respond

2.9 The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation. The LSB will also share the responses received and that are relevant to the levy for the running of the Ombudsman scheme with the Legal Ombudsman.

2.10 There is a preference to receive responses electronically (in Microsoft word format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

**Post:**  
Mahtab Grant  
Legal Services Board  
7th Floor, Victoria House  
Southampton Row  
London WC1B 4AD

**Fax number:** 020 7271 0051

**Email:** [Consultations@LegalServicesBoard.org.uk](mailto:Consultations@LegalServicesBoard.org.uk)

- 2.11 The consultation period will end on **Wednesday 29 September 2010**.
- 2.12 Stakeholder organisations are invited to contact the LSB and Legal Ombudsman to arrange a meeting to discuss their views during the consultation cycle, if they wish. Please send all requests to [Consultations@LegalServicesBoard.org.uk](mailto:Consultations@LegalServicesBoard.org.uk) or to [Enquiries@LegalOmbudsman.org.uk](mailto:Enquiries@LegalOmbudsman.org.uk).

### 3 Approach for calculating the levy

#### Fair principles

- 3.1 Section 173(3) of the Act requires the LSB to act in a way that is consistent with “fair principles” in the allocation of costs for both the Legal Ombudsman and LSB. In addition section 174(4) allows for the levy rules to provide for different parts of the levy to be payable at different rates.
- 3.2 The LSB believes, and the Legal Ombudsman supports this view, that fair principles should match the principles of better regulation and will ensure that:
- they are **transparent** about the way in which the levy is apportioned and applied to their respective activities. Approved Regulators and authorised persons need to know what they are paying for;
  - they are **accountable** to those in whose interests they regulate. There will be no hidden costs and costs should be apportioned to Approved Regulators through a clear mechanism. Their respective annual reports will detail what activities they have undertaken during the course of the year;
  - the size of the levy and its apportionment should be **proportionate**. Its collection should not put undue administrative burdens on Approved Regulators and the LSB and Legal Ombudsman will not fetter the discretion of individual Approved Regulators to decide how to recoup their share of their levy from their own regulated communities (given the different demographics and business models between different parts of the sector);
  - they are **consistent** in how the levy is apportioned, so that it is done in a manner that is based on common and universally accepted and defined measures for all Approved Regulators; and
  - the methods for apportioning the leviable expenditure are **targeted** and efficient to avoid unnecessary costs for Approved Regulators in providing the relevant data.
- 3.3 As the majority of respondents to the LSB’s April 2009 consultation paper either had no comment or largely supported the definition of “fair principles”, the LSB and Legal Ombudsman will assume that respondents would support the use of these principles for the calculation of the operational costs.

#### Methodological assumptions and review

- 3.4 The LSB is required by Part 7 of the Act (specifically sections 173-175) to meet all the Legal Ombudsman, the Lord Chancellor’s and its own leviable costs through a levy on the Approved Regulators.

- 3.5 Section 173(6) of the Act specifies that the LSB's leviable expenditure is the expenditure incurred by the LSB under or for the purposes of this Act less the amounts which the LSB pays into the Consolidated Fund under sections 175(a), (c), (d), (e), (k), (l) and (m) of the Act<sup>4</sup> or by virtue of regulations under paragraph 7(g) of the Schedule to the Compensation Act 2006.
- 3.6 Sections 173(7) and 173(8) of the Act specify that the OLC's leviable expenditure is the expenditure incurred by the OLC (for the Legal Ombudsman) under or for the purposes of this Act less the amounts the OLC pays into the Consolidated Fund under sections 175(1)(g), (h) or (n) of the Act<sup>5</sup>.
- 3.7 Different options have been considered in this consultation paper with regard to the levy mechanisms for the LSB and the Legal Ombudsman. This reflects the fact that the LSB and the Legal Ombudsman have distinct statutory roles and clearly different patterns of cost causation.
- 3.8 The LSB is proposing that the annual costs levy (for both the LSB and the Legal Ombudsman) will be based on the estimated operational budget in their respective finalised business plan.
- 3.9 This will give clarity and certainty to each Approved Regulator of the amounts they will need to raise through practising fees at the earliest possible stage.
- 3.10 The Legal Ombudsman's costs will be demand led and as such they may experience exceptional in-year increases in cost due to increases in the volumes of complaints received. Any material implications of this will result in an adjustment to the levy. In such circumstances any shortfall may require grant-in-aid support to be provided by the Ministry of Justice prior to the adjustment payment being made
- 3.11 Therefore, an example of the timing for the LSB's 2010-11 leviable cost would be as follows:

<b>2010-11</b>	<ul style="list-style-type: none"> <li>• Approved Regulators to provide data on the number of authorised persons that they regulated as at 1 April 2010.</li> <li>• The LSB to calculate the levy share for each Approved Regulator based on the estimated leviable expenditure during the fourth quarter of 2010-11.</li> <li>• Approved Regulators to pay their levy share by 31 March 2011.</li> </ul>
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- 3.12 An example of the timing for the Legal Ombudsman's 2010-11 leviable cost would be as follows:

<sup>4</sup> Sections 175(a), (c), (d), (e), (k), (l) and (m) of the Act refers to a range of application fees and penalties that the LSB collects and pays into the Consolidated Fund.

<sup>5</sup> Sections 175(1)(g), (h) or (n) of the Act refers to a range of charges the OLC may make with regard to its rules.

2010-11	<ul style="list-style-type: none"> <li>• Approved Regulators to provide data on the number of service complaints received up until 31 December 2009.</li> <li>• The LSB and the Legal Ombudsman to calculate the levy share for each Approved Regulator based on the estimated leviable expenditure during the fourth quarter of 2010-11.</li> <li>• Approved Regulators to pay their levy share by 31 March 2011.</li> </ul>
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3.13 The LSB and the Legal Ombudsman intend to undertake an annual internal review of the practical arrangements including the proposals that affect each organisation equally, and to undertake a fundamental review of the options for the LSB and the Legal Ombudsman in 2013-14. This fundamental review will allow us to take account of any lessons learnt.

3.14 In addition, by then the Legal Ombudsman would have fuller data about the nature and origin of its casework and the revenue derived from case fees. Both are likely to assist in calculating and apportioning the leviable costs in the future. The LSB will also be able to reflect on the implications of the licensing of Alternative Business Structures and the moves by a number of Approved Regulators to levy an element of their charges on an entity as well as individual basis for future design of the levy.

**Question 1:** Do respondents agree that the LSB's levy should be calculated on the estimated leviable expenditure and paid by 31 March 2011?

**Question 2:** Do respondents agree that the Legal Ombudsman's levy should be calculated on the estimated leviable expenditure and paid by 31 March 2011?

## **4 LSB's leviable operational costs**

### **Introduction**

- 4.1 Following the outcome of the LSB's April 2009 consultation paper, it was decided that the 2009-10 establishment costs should be calculated on the basis of the number of authorised persons regulated by the respective Approved Regulator as at 1 April 2009. The same methodology was used to calculate the LSB's operational costs for the period 1 January 2010 to 31 March 2010.

### **LSB leviable costs**

- 4.2 The LSB's leviable costs for the 2010-11 financial year are estimated to be £4,931,000 and the levy will be calculated on this basis. This figure differs from the draft 2010-11 Business Plan as it includes a slightly higher depreciation figure for costs that will be recovered over three years rather than wholly in 2009-10 as first envisaged. This figure is in addition to any amounts collected from the Approved Regulators under the establishment costs levy Statutory Instrument.

### **Options**

- 4.3 The LSB has considered three options for how the leviable operational costs should be apportioned and have assessed these approaches against the requirements of the Act and the principles of better regulation.

#### **Option 1 – a risk-based approach**

- 4.4 The LSB's April 2009 discussion paper noted that a considerable amount of discussion had taken place while the Act was going through Parliament as to the levy being based on regulatory risk. As an oversight regulator, the regulatory risks that the LSB needs to focus on are the risk of the Approved Regulators not complying with their obligations under the Act.
- 4.5 This option attempts to quantify the likely detriment in terms of both degree of severity and breadth of impact if an Approved Regulator took actions that were contrary to the regulatory objectives as defined in the Act. An objective assessment of how well each of the Approved Regulators are performing in carrying out their duties to promote the regulatory objectives would be needed.
- 4.6 To determine the risk profile for each Approved Regulator, the LSB would need to obtain a detailed understanding of the operations of each Approved Regulator and determine an objective and uniform way of identifying and quantifying the risks.
- 4.7 It has been suggested that a proxy for measuring the risk of the Approved Regulators not complying with the requirements of the Act is to use the risk data that insurers use to calculate approved persons' professional indemnity insurance.

- 4.8 However, as the LSB is an oversight regulator, it is not appropriate to use cumulative individual risk assessment to determine the risk of an Approved Regulator—it may be the case that approved persons that are members of a particular Approved Regulator may each have high-risk-assessment, but the Approved Regulator itself may actually have a low risk assessment with regard to its activities in complying with the Act, and vice versa.
- 4.9 The LSB notes that in the responses to the April 2009 consultation paper most of the respondents either had not commented or had agreed that there are no suitable metrics for assessing regulatory risk to enable this to be used as an apportionment tool for the LSB’s costs.
- 4.10 This risk-based approach touches upon the suggestion by the Council for Licensed Conveyancers made in its response to the April 2009 consultation paper that “a hybrid option of authorised persons and regulated practices is one which should be explored in the future”.<sup>6</sup>
- 4.11 Currently, there are two Approved Regulators that can regulate entities—the Solicitors Regulation Authority and the Council for Licensed Conveyancers. As the number of regulated entities increases, partly as a result of changes in the practice of Approved Regulators themselves and partly with the implementation of ABS, it is therefore likely to be necessary to reassess whether to base the levy on the number of entities regulated as well as (or even, instead of) the number of authorised persons.
- 4.12 Therefore, the LSB will undertake a more detailed consideration of this approach, but not until after ABS have been established (it is currently expected that Licensing Authorities will approve the first ABS entities in October 2011). As such, the LSB will look in detail at the issue in relation to levy proposals for 2013-14, which will also coincide with the Legal Ombudsman’s review of the methodology of calculating its case fee revenue.

**Question 3:** 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 costs burdens to the LSB, Approved Regulators and individual regulated entities and individuals?

### **Option 2 – volume of activity generated by each Approved Regulator**

- 4.13 This approach calculates the levy based on the volume of activity that is generated by each Approved Regulator in their fulfilment of their obligations under the Act and our engagement with them.
- 4.14 This option assumes that the LSB would be focussing its work on those aspects of the profession that pose the greatest risk in not meeting the requirements of the Act and therefore, that it would be able to distribute costs on an “amount of work generated” basis. This could only be done with

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<sup>6</sup> Council for Licensed Conveyancers, refer “The Levy: Funding Legal Services”, Decision Paper, September 2009, page 13.

any degree of accuracy on a retrospective basis, so that the previous year's work drives the next year's apportionment.

- 4.15 The benefit of this option is that it aligns the amount of work that is generated by an Approved Regulator to the direct costs that are incurred by the LSB. This approach is also targeted, as the costs incurred by a particular Approved Regulator are only paid by that Approved Regulator.
- 4.16 To make this work, the LSB would be required to provide detailed records of the time and type of work that it has undertaken, attributed to an Approved Regulator. This would arguably provide beneficial further transparency and accountability in terms of the work that is undertaken by the LSB.
- 4.17 However, the administrative cost of so doing means that it is probable that any such decision would fail a cost benefit analysis. Moreover, this option would shift the data collection costs onto the LSB, these would be subsequently cost-recovered from the Approved Regulators and hence ultimately the industry and consumers.
- 4.18 A further weakness of this option is that the costs of some components of the LSB's planned work for 2010-11 (for example, research into unreserved and reserved activities) could at this stage be apportioned fairly by an even allocation across all of the Approved Regulators in the 2010-11 levy. However, any emerging work and benefits may not apply to all of the Approved Regulators. This could therefore mean that the 2010-11 levy was incorrectly apportioned. It may also mean that adjustments would be required to the future levy calculations to take into account this "error".
- 4.19 There is also a general point to be made about the perceived "fairness" of this approach. The Act imposes the same regulatory burdens on all Approved Regulators, irrespective of the number of authorised persons whom they regulate. The job of the LSB is to ensure that the Approved Regulators are securing those objectives. So, putting any "exceptional" pieces of business to one side, there is no necessary correlation between the amount of work undertaken by the LSB and the size of the population covered by an Approved Regulator.
- 4.20 Hence, it is possible to envisage that the impact that the levy may have for an authorised person who is a member of a smaller-sized Approved Regulator could be several-fold greater than that for an authorised person who is a member of a larger sized Approved Regulator, even though the volume of work caused by that person's Approved Regulator to the LSB was no greater than that caused by the larger Approved Regulator. It seems unlikely that such a decision would be considered reasonable.
- 4.21 As such, the LSB considers that this argument addresses the concern that was raised by the Legal Services Complaints Commissioner in her response to the April 2009 consultation paper, when she stated "as we look to the medium-term, I feel that the effects of the levy, particularly on small



Approved Regulators, should be monitored and account taken of their concerns to ensure that appropriate changes are made in a timely manner.”<sup>7</sup>

- 4.22 Furthermore, in response to the April 2009 consultation paper, all of the respondents agreed that there are no suitable metrics for the assessment of the volume of activity to enable this to be used as an apportionment tool for the LSB’s costs.

**Question 4:** 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?

### **Option 3 - number of authorised person regulated by the Approved Regulator**

- 4.23 This option is the same methodology that was used to calculate the LSB’s levy amounts for 2009-10, that is, the costs of operating the LSB are apportioned on a per capita basis, based on the number of authorised persons who hold practising certificates or are otherwise registered to carry out reserved legal activities with an Approved Regulator.
- 4.24 The number of authorised person would be used as a proxy for the volume of work generated by each Approved Regulator. Similar to last year, the LSB would ask Approved Regulators to provide data on the number of members holding practising certificates at a fixed date—a common measure for all Approved Regulators. It is proposed that this be 1 April for each year.
- 4.25 The LSB appreciates that some Approved Regulators may be moving to systems that take account of entities as well as individuals. The LSB considers that how an individual Approved Regulator recoups the cost of the levy from the regulated community they serve would be entirely up to them as long as it is fair and transparent.
- 4.26 This option reflects the fact that, as an oversight regulator, the LSB interacts with all of the Approved Regulators on some matters but that some of our activities relate only to certain Approved Regulators.
- 4.27 This is the LSB’s preferred option, as it is a simple approach that requires a minimum amount of data collection for both the Approved Regulators and the LSB. Using this method the LSB can clearly define the costs for each Approved Regulator from the outset. The LSB notes that in the April 2009 consultation paper that the majority of respondents favoured this approach.
- 4.28 The approach meets the definition of fair principles in being transparent and clear to the Approved Regulators, as we are following a clear methodology that does not place extensive regulatory burdens on the Approved Regulators in terms of data collection. In terms of proportionality, it takes

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<sup>7</sup> Complaints Commissioner, refer “The Levy: Funding Legal Services”, Decision Paper, September 2009, page 13

account of the relative sizes of the Approved Regulators and uses a consistent methodology between them. This approach is also consistent with the approach that was used to calculate the establishment costs and the operational costs for the period 1 January 2010 to 31 March 2010.

4.29 The following table provides an indication of what the Approved Regulators will be paying in 2010-11.

Approved Regulator	Number of authorised persons at 1 April 2009	Indicative levy payable (£)	Percentage of the costs
The Law Society	113,031	3,977,590	80.66%
General Council of the Bar	15,104	531,514	10.78%
Institute of Legal Executives	7,391	260,091	5.27%
Chartered Institute of Patent Attorneys	1,742	61,301	1.24%
Council for Licensed Conveyancers	989	34,803	0.71%
Institute of Trademark Attorneys	794	27,941	0.57%
Faculty Office	827	29,102	0.59%
Association of Law Costs Draftsmen	246	8,657	0.18%
Association of Chartered Certified Accountants	0	0	0.00%
Institute of Chartered Accountants of Scotland	0	0	0.00%
Total	140,124	4,931,000	100.00%

**Table 1 – Estimated LSB levy contributions for 2010-11.** *Please note that the levy payable for April 2010 to March 2011 will be based on numbers of authorised persons as at 1 April 2010 so the amounts payable will change and are shown for illustrative purposes only.*

4.30 On the above basis, should the Approved Regulators pass on the costs to their members on a per capita basis, each authorised person would pay **£35.19**.

**Question 5:** Do respondents consider the number of authorised persons per Approved Regulator approach is the most appropriate way of calculating the LSB's levy?

## 5 OLC's (Legal Ombudsman) leviable operating costs

### Introduction

- 5.1 The Legal Ombudsman<sup>8</sup> is a separate organisation from the LSB with a very different function. It is therefore important that, when defining the levy for the Legal Ombudsman that it is assessed separately from the LSB's levy. It is also important that, in line with fair principles, the levy for the implementation costs for the Legal Ombudsman is apportioned in a manner that reflects cost causation.

### Legal Ombudsman operational costs

- 5.2 It is expected that the Legal Ombudsman scheme will be operational from later in 2010 onwards. The Legal Ombudsman will recoup its operational costs from two sources: case fee revenue and the levy.
- 5.3 Under section 136 of Part 6 of the Act, the Legal Ombudsman must obtain case fee revenue from respondents to complaints, subject to certain waiver provisions that are set out in the Act. Although the Legal Ombudsman is yet to take on cases, it estimates that under the proposed case fee structure, during the initial two year period, up to 10 per cent of its total operational costs may be funded via case fees.<sup>9</sup> The remaining costs will be funded via the levy. The annual costs of the Legal Ombudsman are currently estimated at £19.9 million.

### Options

- 5.4 The Legal Ombudsman has considered two options for how its leviable operational costs should be apportioned, and has assessed these approaches against the principles of better regulation.

#### Option 1 – number of authorised persons regulated by each Approved Regulator

- 5.5 One option would be to apportion the costs of implementing the Legal Ombudsman scheme on a per capita basis, based on the number of authorised persons who hold practising certificates, in the same way the LSB levies Approved Regulators with regard to its January to March 2010 operational costs.
- 5.6 The Legal Ombudsman would ask for data on the number of authorised persons holding practising certificates at a fixed date—common for all Approved Regulators. The number would be used as a proxy for the volume of work generated by each Approved Regulator.
- 5.7 This is a simple approach that requires a minimum amount of data collection for both the Approved Regulators. Using this method the Legal Ombudsman

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<sup>8</sup> Section 115(3) of the Act provides for the Office for Legal Complaints to operate its ombudsman scheme under a different name. The ombudsman scheme is referred to as "Legal Ombudsman".

<sup>9</sup> Refer Legal Ombudsman, "Response to Consultation: Setting a Fair Case Fee", March 2010.

is better able to define the costs for each Approved Regulator from the outset, which would enable them to adjust practising fees and their internal processes as part of their normal business planning cycles.

- 5.8 The approach meets the definition of fair principles in being transparent and clear to all regulators, as the Legal Ombudsman is following a clear methodology that does not place extensive regulatory burdens on the Approved Regulators in terms of data collection. In terms of proportionality, it takes account of the relative sizes of the regulators and uses a consistent methodology between them. The Legal Ombudsman would review this arrangement within three years of operation to make sure that the levy methodology is as fair as possible.
- 5.9 However, this approach does not recognise entity-based regulation or the fact that some of the Approved Regulators' authorised persons work in solicitors' firms and, therefore, complaints against these authorised persons may actually be lodged against the solicitors who were managing those authorised persons.
- 5.10 This approach takes no account of the relative number of complaints that are currently generated and the reasons behind the creation of the Legal Ombudsman scheme. In addition, all of the respondents to the April 2009 consultation paper considered that this option did not fit the fairness principles.

**Question 6:** 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?

**Option 2 – number of service complaints about authorised persons regulated by each Approved Regulator**

- 5.11 Another option is to apportion the Legal Ombudsman leviable costs based on the number of service complaints about authorised persons that are regulated by each Approved Regulator.
- 5.12 A service complaint is an expression of dissatisfaction about the service. The complaint may be purely about service or it may also have a disciplinary element—the key point is that the numbers provided must relate to the category of cases which the Legal Ombudsman scheme will in future be able to resolve (whether in whole or part).
- 5.13 The Legal Ombudsman anticipates that there may be a period of time between consumers lodging complaints against respondents (lawyers and firms who are regulated by the Approved Regulators) and any complaints coming to it and reaching some form of resolution. This means that for the purpose of the levy, the initial number of complaints might not represent the spread over a full year. Using an approach that takes an historic average over a fixed three-year period would help to mitigate this problem in the initial period.

- 5.14 As such, for the purposes of calculating the levy, the Legal Ombudsman proposes that the number of complaints will be calculated as an average of service complaints over a fixed three-year period ending 31 December 2009. This approach was used to calculate the Legal Ombudsman's 2009-10 share of the implementation costs.
- 5.15 Approved Regulators will be required to demonstrate objectively the criteria by which they separate past service from conduct complaints if they do not currently do so, or the total number of complaints for the fixed three-year period will be used.
- 5.16 However, under this option any service complaints generated by ICAS, ACCA, and new Approved Regulators will not be captured. These Approved Regulators will not be contributing to the payment of the Legal Ombudsman's leviable costs until such time as a new methodology is adopted (refer Chapter 2 for more details on the review of the levy arrangements).
- 5.17 Therefore, the Legal Ombudsman is proposing that this fixed three-year period average will be used until it determines whether it wants to adopt a different levy methodology. However, the Legal Ombudsman would welcome your views if you consider that there are more appropriate ways to estimate the likely number of complaints and/or cases during this period.
- 5.18 This is the Legal Ombudsman's preferred option, as it is a simpler approach that requires a minimum amount of data collection for Approved Regulators, since they already have data on the number of complaints against the authorised persons that they deal with. In addition, the majority of respondents to the LSB's April 2009 consultation paper supported this approach.
- 5.19 The methodology used to calculate the Legal Ombudsman's establishment costs apportioned the costs to those Approved Regulators that represented more than 0.1 per cent of total complaints.
- 5.20 However, it is proposed that for the Legal Ombudsman leviable operational costs that Approved Regulators will be required to contribute to the levy proportionally with regard to the number of complaints that were lodged against those whom they regulate (that is, 100 per cent of the leviable costs will be levied).
- 5.21 As mentioned above, although the Legal Ombudsman is yet to take on cases, it estimates that under the proposed case fee structure, during the initial two year period, up to 10 per cent of its total operational costs may be funded via case fees.<sup>10</sup> The remaining costs will be funded via the levy. The annual costs of the Legal Ombudsman are currently estimated at £19.9 million. However, for 2010-11, this figure would be less as the Legal Ombudsman scheme is expected to become operational in the second half of 2010.

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<sup>10</sup> Refer Legal Ombudsman, "Response to Consultation: Setting a Fair Case Fee", March 2010.

- 5.22 Also, as the likely operational costs will be less than a full year, an accurate estimate of the Approved Regulators' share of the Legal Ombudsman's 2010-11 operational costs can not be provided. It is expected that in the following future years the LSB and the Legal Ombudsman would be better placed to provide accurate estimates of the Legal Ombudsman's levy.
- 5.23 This approach is proportionate and targeted as those responsible for the majority of complaints will be responsible for the Legal Ombudsman operational costs. It provides incentives to Approved Regulators to encourage firms or authorised persons to deal with complaints better in-house and therefore reduce the cost burden associated with the Legal Ombudsman. It is also a consistent mechanism that is proportionate, as it reflects the way complaints are handled at the point of initiation.

**Question 7:** 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)?

## 6 Apportioning and collecting the levy—specific scenarios

- 6.1 In addition to proposing arrangements for the apportionment and collection of the levy during a “business as usual” financial year, the LSB and the Legal Ombudsman are also seeking comment on series of proposals that will cater for a range of scenarios. These arrangements are consistent with section 174(4) of the Act, where it provides for different parts of the levy to be payable at different rates.
- 6.2 The LSB and the Legal Ombudsman consider that it is consistent with better regulation principles that they articulate how they intend to apportion and collect the levy where:
- an Approved Regulator’s behaviour generates disproportional work to the LSB and/or the Legal Ombudsman;
  - an Approved Regulator’s designation is cancelled with regard to one or more, or all, of its reserved legal activities;
  - an Approved Regulator becomes bankrupt; and
  - the Lord Chancellor designates a new body to become an Approved Regulator.
- 6.3 A joint approach to these scenarios is required as it would affect the levy calculation and collection for both the LSB and the Legal Ombudsman.
- 6.4 The LSB and Legal Ombudsman consider that these proposals are proportionate and targeted, and believe that it is important that a consistent and transparent approach is adopted.

### Approved Regulator-specific costs for the LSB and the Legal Ombudsman

- 6.5 The Act sets out the responsibilities the LSB and the Legal Ombudsman are required to perform. In performing their responsibilities, the costs incurred by the LSB and the Legal Ombudsman are funded by the legal profession. The way in which the costs should be funded are canvassed in Chapters 4 and 5.
- 6.6 However, the LSB and the Legal Ombudsman consider that there may be situations whereby an Approved Regulator may generate a disproportionate level of work to the LSB and/or the Legal Ombudsman, which would either cause the LSB and/or the Legal Ombudsman to incur additional costs to their operating budgets or require them to significantly redistribute their resources to resolve the matter with the Approved Regulator. Should this occur, the LSB and Legal Ombudsman have termed this as “business *not* as usual”.

- 6.7 The LSB and the Legal Ombudsman are proposing that the criteria for “business *not* as usual” activities are those:
- that are attributable to a specific Approved Regulator;
  - that are undertaken within the scope of the Board and Ombudsman’s respective powers but are disproportionate in their impact; and
  - that require a disproportionate use of resources.
- 6.8 The LSB, with the agreement of the Legal Ombudsman, are proposing that the “business *not* as usual” costs will be levied on only on the Approved Regulator(s) that caused the costs to be incurred.
- 6.9 Examples of such “business *not* as usual” activities may include, but are not limited to, any form of enforcement process beyond an informal attempt at resolution or regulatory review or investigation work triggered by identified issues in an Approved Regulator’s performance. This approach draws upon the suggestion made by The Law Society in its response to the 2009 consultation paper with regard to the possible apportionment options in the medium-term suggested that we should “seek to identify which of [the LSB’s] activities [that] are general in nature...and which are attributable to a particular Approved Regulator”.<sup>11</sup>
- 6.10 For example, the costs associated with a court case involving the LSB, or the Legal Ombudsman and, say, an individual member of the public or an entity that is not an Approved Regulator would be leviable on all of the Approved Regulators. This is because the costs are not attributable to a specific Approved Regulator.
- 6.11 However, if an Approved Regulator takes unfounded legal action against the LSB or Legal Ombudsman for a matter concerning only its members then it is proposed that the LSB’s, or the Legal Ombudsman’s, costs in defending that action would be levied on that particular Approved Regulator.
- 6.12 A working example of this scenario is as follows: the LSB’s leviable expenditure is £5 million for a given financial year. There are 10 Approved Regulators. During the year, one of the Approved Regulators, ‘Approved Regulator XYZ’, generates a disproportional amount of work for the LSB, which is valued at an additional £70,000. In calculating the levy, the £5 million is levied among the 10 Approved Regulators based on the number of Authorised Persons they regulate. The additional £70,000 is also paid by ‘Approved Regulator XYZ’ only.
- 6.13 Careful consideration is needed to decide whether this approach should be adopted only if costs for the activity concerned crossed a given threshold, for example, £100,000. As explained in Chapter 4 above, to attempt to cost all activity with a view to identifying every possible case of unusual activity which meets the criteria may lead to a disproportionate systems cost which

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<sup>11</sup> The Law Society, “The Levy: Funding Legal Services”, Decision Paper, September 2009, page 17.



would be an unjustifiable burden on the profession as a whole. The LSB and the Legal Ombudsman would welcome views both on this general principle and, if accepted, on how and at what level such a threshold might best be set.

- 6.14 Should the LSB or the Legal Ombudsman consider that it may be appropriate to levy the additional costs to a specific Approved Regulator, they will discuss with the Approved Regulator and take their views into consideration before deciding what, if any, additional levy will be imposed. In addition, if the costs are material, the LSB or the Legal Ombudsman may consult with the other Approved Regulators and other stakeholders to seek their views on whether the costs should be levied on the sole Approved Regulator.
- 6.15 The LSB and Legal Ombudsman consider this approach to be proportional and targeted as the Approved Regulators who are not initiating this additional excess cost would not be asked to contribute to it.

**Question 8:** 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?

### **Cancellation of designation as an Approved Regulator**

- 6.16 Section 45(3) of the Act requires the LSB to recommend to the Lord Chancellor that an order is made to cancel a body’s designation as an Approved Regulator in relation to one or more of an Approved Regulator’s reserved legal activities if the body applies to the Board for such a recommendation.
- 6.17 Section 45(5) of the Act makes provision for the LSB to recommend to the Lord Chancellor that an order is made cancelling a body’s designation as an Approved Regulator in relation to one or more reserved legal activities if it is satisfied that an act or omission of an Approved Regulator has had, or is likely to have, an adverse impact on one or more of the Regulatory Objectives; and that it is appropriate to cancel the body’s designation in relation to the activity or activities in question in all the circumstances of the case.
- 6.18 The LSB and the Legal Ombudsman are proposing that if the cancellation of designation is in relation to all reserved legal activities, any unpaid amount should be paid in full at the time of the cancellation order is made. The calculation of the unpaid levy amount would be based on the number of days that that Approved Regulator held its designation before it was cancelled. That is, a pro-rata of the estimated full year’s levy (for the LSB and the Legal Ombudsman).

- 6.19 However, if the cancellation is in relation to one or more, but not all, of the reserved legal activities in relation to which the “leviable body” is an Approved Regulator, any unpaid amount remains payable in accordance with the levy cycle (refer Chapter 7 for details). The full amount of that Approved Regulator’s share of the levy (for the LSB and the Legal Ombudsman) will be levied, since the Approved Regulator still has its Approved Regulator designation.

**Question 9:** What are your views on the proposed approach for the cancellation of designation of an Approved Regulator?

### **Bankruptcy of an Approved Regulator**

- 6.20 The LSB and the Legal Ombudsman would also like to seek your views with regard to Approved Regulators that experience severe financial difficulties or experience other factors that may make it difficult for them to pay their levy contributions.
- 6.21 In the circumstance where an Approved Regulator experiences severe financial difficulties, such as bankruptcy, we are proposing that the total cost of the levy to be recouped from the remaining Approved Regulators.
- 6.22 As it is very unlikely that the bankrupt Approved Regulator would be able to pay much, if any, of its levy contribution, this approach shares the burden among the other Approved Regulators. The magnitude of the financial impact on the other Approved Regulators is dependent on the levy contribution of the Approved Regulator that has become bankrupt.
- 6.23 Should an Approved Regulator experience, or be likely to experience, bankruptcy, the LSB may also consider whether it should recommend to the Lord Chancellor that an order be made to cancel that Approved Regulator’s designation.
- 6.24 It is important to note that the LSB or the Legal Ombudsman does not envisage that any of the Approved Regulators are likely to become bankrupt. The purpose of providing for this scenario is that should an Approved Regulator become bankrupt that the mechanism is already in place and that the mechanism is transparent.

**Question 10:** What are your views on the proposed approach with regard to ensuring that 100 per cent of the levy is collected from all the remaining Approved Regulators?

### **Designation of a new Approved Regulator**

- 6.25 There are currently 10 Approved Regulators. However, paragraph 17 of Part 2 of Schedule 4 to the Act provides for the Lord Chancellor to make an order to designate a body to become an Approved Regulator. If the Lord Chancellor decides to make an order, and the designation takes effect after 1 April of that year, it is proposed that that Approved Regulator will not be required to contribute to the payment of the levy until the following year.
- 6.26 The basis of this approach is that it is unlikely that a new Approved Regulator would have many, or any, Authorised Persons or service complaints made against it. The new Approved Regulator would not be required to contribute to the Legal Ombudsman's component of the levy, as it is calculated on the number of service complaints received before 31 December 2009.

**Question 11:** What are your views on the proposed approach with regard to the levy arrangements for new Approved Regulators?

## 7 Timing for collecting the levy

### Introduction

- 7.1 The LSB, with the support of the Legal Ombudsman, is committed to 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. A clear approach to the collection of the levy will help the Approved Regulators to manage their administrative processes.

### Expected timing

- 7.2 To enable the levy to be calculated as soon as possible, the LSB, with the agreement of the Legal Ombudsman, is proposing to base the levy on the finalised operational budget published as part of their respective Business Plans and to recover this by 31 March each year.
- 7.3 The benefit of this approach is that Approved Regulators would have a high degree of certainty in order to calculate and set their fees for practising certificates.

**Question 12:** Is the proposed payment date (by 31 March) workable for Approved Regulators?

## 8 Statutory Instrument

- 8.1 Section 205(2) of the Act requires the LSB to publish a draft copy of the rules. As such, the draft rules, which includes the LSB's and the Legal Ombudsman's preferred options, is set out in this chapter. Concurrent to the consultation process, the LSB, with the agreement of the Legal Ombudsman, will consult the Joint Committee on Statutory Instruments to ensure that the draft rules have been drafted properly.
- 8.2 Consistent with section 205(5) of the Act, the LSB proposes, with the support of the Legal Ombudsman, that if there are material changes to the draft rules as a result of the consultation responses, a decision paper along with the amended draft rules will be published. The LSB, with the support of the Legal Ombudsman, will reserve the right to consult only on the affected policy proposal(s) and the relevant part(s) of the draft rules.
- 8.3 Minor changes to the draft rules (such as drafting and presentational in nature) will not be consulted upon again. This adopts a proportional approach and avoids undue consultation. This approach is consistent with section 205(5) of the Act.

**Question 13:** Do the draft rules accurately reflect the preferred approach (as set out in the consultation paper)?

2010 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Levy)  
(No.2) Rules 2010 - **DRAFT**

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<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Legal Services Board with the consent of the Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 173, 174 and 204(2), (3) and (4)(b) of the Legal Services Act 2007<sup>(12)</sup>.

In accordance with section 173(3) of that Act, the Legal Services Board has satisfied itself that the apportionment of the levy as between different leviable bodies is in accordance with fair principles.

The Legal Services Board has complied with the consultation requirements in section 205 of that Act.

*General*

**Citation, commencement and interpretation**

- 1.—(1) These Rules may be cited as the Legal Services Act 2007 (Levy) (No.2) Rules 2010.
- (2) These Rules come into force on [date].
- (3) In these Rules “the 2007 Act” means the Legal Services Act 2007<sup>(13)</sup>.
- (4) In these Rules any reference, in relation to the imposition of a levy, to—
  - (a) the leviable Board expenditure; or
  - (b) the leviable OLC expenditure,

is a reference to such expenditure in relation to the 12 month period in respect of which the levy is imposed.

*Annual levy*

**Levy imposed under these Rules**

- 2.—(1) A levy is to be imposed on leviable bodies in respect of the 12 month period ending with 31st March 2011 and in respect of each successive 12 month period.
- (2) The levy is for the purpose of raising an amount corresponding to the aggregate of—

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<sup>(12)</sup> 2007 c. 29.

<sup>(13)</sup> “Leviable body”, “leviable Board expenditure” and “leviable OLC expenditure” are defined in section 173 of the Legal Services Act 2007. “The Board” and “the OLC” are respectively defined in sections 2 and 114 of that Act.

- (a) the leviable Board expenditure; and
  - (b) the leviable OLC expenditure.
- (3) The expenditure referred to in paragraph (2)(a) or (b) may include—
- (a) estimated expenditure; and
  - (b) such amount as is necessary to make good any shortfall in respect of a levy previously imposed.
- (4) For the purposes of paragraph (3)(b)—
- (a) the reference to a levy previously imposed is to a levy imposed under these Rules or under the Legal Services Act 2007 (Levy) Rules 2010<sup>(14)</sup>; and
  - (b) the reference to shortfall, in respect of any such levy, is to the difference between the amount to be raised by way of that levy and the amount actually received by the Board.
- (5) The Board must obtain the Lord Chancellor’s agreement to the amount to be raised by way of the levy in respect of each 12 month period.

*Amount payable by each leviable body*

**Determining the amount of the levy for each leviable body**

**3.—**(1) The amount that each leviable body must pay to the Board in respect of the levy imposed in respect of any 12 month period is to be determined by adding together the amounts determined for that body under rules 4 and 5 (subject to paragraphs (2) and (3)).

- (2) Where a body becomes a leviable body in the course of any 12 month period (“the initial period”)—
- (a) no amount is payable by the leviable body under paragraph (1) in respect of the initial period; and
  - (b) the amount that the leviable body must pay to the Board in respect of each subsequent 12 month period is the amount determined for that body under rule 4 only; but
  - (c) if the leviable body is the subject of a determination under rule 4(3) or 5(3) in respect of any 12 month period, the amount that the body must pay to the Board under paragraph (1) is—
    - (i) where the determination is in respect of the initial period, any amount determined for that body under rule 4(4)(a) or 5(4)(a) (or the aggregate of such amounts); and
    - (ii) where the determination is made in respect of any subsequent 12 month period, any amount determined for that body under rule 4, together with the amount (if any) determined for that body under rule 5(4)(a).
- (3) The amount that a body would otherwise be required to pay under paragraph (1) is to be proportionately reduced where—
- (a) before the end of any 12 month period, the body ceases to be a leviable body because its designation as an approved regulator is cancelled by an order under section 45 (cancellation of designation as approved regulator) of the 2007 Act; and
  - (b) the order is made in relation to all the reserved legal activities in relation to which the body was an approved regulator.
- (4) The Board must notify each leviable body of the imposition of the levy, stating—
- (a) the amount determined for that body; and
  - (b) the deadline for payment determined in accordance with rule 7.
- (5) The leviable body must pay to the Board the amount stated in the notice.

**Apportionment of leviable Board expenditure**

**4.—**(1) Subject to paragraphs (3) to (5), the amount payable by a leviable body under this rule is an amount equal to the relevant proportion of leviable Board expenditure.

- (2) For these purposes—

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<sup>(14)</sup> S.I. 2010/213.

- (a) the relevant proportion is the number at the specified date of persons authorised by the leviable body to carry on one or more reserved legal activities, as a proportion of the total number at that date of persons authorised by all leviable bodies to carry on one or more such activities; and
  - (b) the specified date is 1st April of the 12 month period in respect of which the levy is imposed.
- (3) Paragraphs (4) and (5) apply where the Board determines on reasonable grounds that—
- (a) anything done, or not done, by a leviable body has given rise to an additional amount of leviable Board expenditure; and
  - (b) as a result, the amount of leviable Board expenditure attributable to that body is materially disproportionate to the amount attributable to any other leviable body (apart from one in respect of whom a determination under this paragraph has also been made).
- (4) The total amount of leviable Board expenditure to be used in applying the calculation described in paragraph (1) is to be reduced as follows—
- (a) in relation to each leviable body which is the subject of a determination under paragraph (3), the Board must determine the additional amount of leviable Board expenditure referred to in paragraph (3)(a); and
  - (b) the amount so determined (or the aggregate of such amounts) is to be deducted from the total amount of the leviable Board expenditure which would otherwise be used for the purposes of the calculation described in paragraph (1).
- (5) The amount payable by each leviable body which is the subject of a determination under paragraph (3) is the aggregate of the amounts determined for that body under paragraphs (1) and (4)(a).

#### **Apportionment of leviable OLC expenditure**

**5.—**(1) Subject to paragraphs (3) to (5), the amount payable by a leviable body under this rule is an amount equal to the relevant proportion of leviable OLC expenditure.

- (2) For these purposes—
- (a) the relevant proportion is the number of service complaints received in the course of the reference period by the leviable body in its former regulatory capacity, as a proportion of the total number of service complaints received in the course of that period by all leviable bodies in their former regulatory capacities; and
  - (b) the reference period is the three year period ending on 31st December 2009.
- (3) Paragraphs (4) and (5) apply where the Board determines on reasonable grounds that—
- (a) anything done, or not done, by a leviable body has given rise to an additional amount of leviable OLC expenditure; and
  - (b) as a result, the amount of leviable OLC expenditure attributable to that body is materially disproportionate to the amount attributable to any other leviable body (apart from one in respect of whom a determination under this paragraph has also been made).
- (4) The total amount of leviable OLC expenditure to be used in applying the calculation described in paragraph (1) is to be reduced as follows—
- (a) in relation to each leviable body which is the subject of a determination under paragraph (3), the Board must determine the additional amount of leviable OLC expenditure referred to in paragraph (3)(a); and
  - (b) the amount so determined (or the aggregate of such amounts) is to be deducted from the total amount of leviable OLC expenditure which would otherwise be used for the purposes of the calculation described in paragraph (1).
- (5) The amount payable by each leviable body which is the subject of a determination under paragraph (3) is the aggregate of the amounts determined for that body under paragraphs (1) and (4)(a).

(6) In this rule—

“the 1990 Act” means the Courts and Legal Services Act 1990 Act<sup>(15)</sup>;

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<sup>(15)</sup> 1990 c. 41.



“former regulatory capacity”, in relation to a leviable body, means the capacity in which before 1st January 2010 the body in question regulated persons who, before that date, fell within one or more of paragraphs (a) to (f)—

- (a) any person with any right of audience before a court in relation to any proceedings which was granted, or is deemed to have been granted, by the body in question under sections 27(2) (rights of audience) or 31 (barristers or solicitors) of the 1990 Act<sup>(16)</sup>;
- (b) any person with any right to conduct litigation in relation to any proceedings which was granted, or is deemed to have been granted, by the body in question under sections 28(2)(a) (rights to conduct litigation) or 31 of the 1990 Act<sup>(17)</sup>;
- (c) any person providing probate services by virtue of an exemption under section 55 (preparation of probate papers etc: exemption from section 23(1) of the Solicitors Act 1974<sup>(18)</sup>) of the 1990 Act<sup>(19)</sup> which was granted by the body in question;
- (d) any person practising as a duly certificated notary in accordance with rules made by the body in question under section 57 (notaries) of the 1990 Act<sup>(20)</sup> (and for these purposes, “duly certificated notary” has the meaning given in paragraph 12 of Schedule 5 to the 2007 Act);
- (e) any person who is authorised by, or registered with, the body in question and who is an authorised person within the meaning of section 113 (administration of oaths and taking of affidavits) of the 1990 Act<sup>(21)</sup>; or
- (f) any person licensed or otherwise authorised by the body in question to carry on conveyancing services within the meaning of section 119 of the 1990 Act; and

“service complaint” means a complaint received before 1st January 2010 by a leviable body in its former regulatory capacity, being a complaint—

- (a) that was made by, or on behalf of, a consumer;
- (b) that relates to an act or omission of any person at a time when that person—
  - (i) was regulated by the body in question, or
  - (ii) was not so regulated but was a manager or employee of a person who was so regulated; and
- (c) that was eligible to be dealt with under arrangements made by the body in question for the determination of consumer complaints.

#### *Duty to provide information*

### **Duty to provide information required to calculate the levy**

**6.—(1)** For the purpose of enabling the Board to determine the amount payable by a leviable body in respect of any 12 month period, each leviable body must provide the Board with the information required by paragraphs (2) and (3).

(2) The information to be provided is—

- (a) for the purposes of rule 4, a statement of the number of persons who were authorised by the leviable body at 1st April of the 12 month period in question; and

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<sup>(16)</sup> Section 27(2)(a) was amended by paragraph 6(2) of Schedule 6 to the Access to Justice Act 1999 (c. 22). The section was repealed by paragraph 84(g) of Schedule 21 to the Legal Services Act 2007. Section 31 was substituted by section 36 of the Access to Justice Act 1999. The section was repealed by paragraph 84(g) of Schedule 21 to the Legal Services Act 2007.

<sup>(17)</sup> Section 28(2)(a) was amended by paragraph 7(2) of Schedule 6 to the Access to Justice Act 1999. The section was repealed by paragraph 84(e) of Schedule 21 to the Legal Services Act 2007.

<sup>(18)</sup> 1974 c. 47. Section 23 was repealed by paragraph 26 of Schedule 16 to the Legal Services Act 2007.

<sup>(19)</sup> Section 55 was amended by S.I. 2003/1887. The section was repealed by paragraph 88 of Schedule 21 to the Legal Services Act 2007.

<sup>(20)</sup> Section 57 was amended by Part 2 of Schedule 15 to the Access to Justice Act 1999.

<sup>(21)</sup> Section 113 was amended by Part 2 of Schedule 15 to the Access to Justice Act 1999 and S.I. 2003/1887. The section was repealed by paragraph 96 of Schedule 21 to the Legal Services Act 2007.

(b) for the purposes of rule 5, a statement of the number of service complaints received in the course of the reference period by the leviable body in question in its former regulatory capacity (and for this purpose “reference period” and “former regulatory capacity” have the meaning given in rule 5).

(3) Any statement provided under paragraph (2) must contain or be accompanied by such information as will enable the Board, or such person as the Board may appoint, to be satisfied that the numbers stated are correct.

(4) The information must be provided—

(a) before the end of the period of one month starting with 1st April of the 12 month period in respect of which the levy is to be imposed; or

(b) on or before such later date as may be agreed in writing between the Board and the leviable body.

(5) The information referred to in paragraph (2)(b) does not have to be provided more than once.

*Arrangements for payment*

**Making payment**

7.—(1) Subject to paragraph (2), the amount of levy that a leviable body is required to pay to the Board under rule 3 must be paid in full by the leviable body no later than—

(a) 31st March of the 12 month period to which the levy relates; or

(b) if later, the end of the period of 28 days starting with the date of the notice given to the leviable body under rule 3(4).

(2) Where a cancellation order in relation any body has been made as described in rule 3(3), the reduced amount determined for that body under rule 3(3) is immediately payable with effect from the date of the cancellation order.

**Interest payable on late payment**

8. If payment is not made by a leviable body in accordance with the requirements of rule 7, the Board is entitled to charge interest on any amount unpaid at the rate which is for the time being specified in section 17(1) of the Judgments Act 1838<sup>(22)</sup> in relation to a judgment debt.

Made by the Legal Services Board at its meeting on [date]

I consent  
Signed by authority of the Lord Chancellor

Date

*Name*  
*[Minister]*  
Ministry of Justice

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<sup>(22)</sup> 1838 c. 110. A relevant amendment was made by S.I. 1993/564.

## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules impose a levy under sections 173 and 174 of the Legal Services Act 2007 (c. 29).

Rule 2 provides that a levy is to be imposed in relation to the 12 month period ending with 31st March 2011 and in relation to each successive 12 month period. Each levy is to cover the leviable expenditure of the Legal Services Board (“the Board”), and leviable expenditure of the Office for Legal Complaints (“the OLC”), in respect of the period in respect of which the levy is imposed.

Rules 3 to 5 specify the procedure for determining the amount of levy that each leviable body must pay in respect of each 12 month period and the procedure for notifying each body of the amount due. Rule 3 provides that that amount is to be determined for a leviable body by adding together the amounts determined under rules 4 and 5. The amount payable may be reduced in the circumstances specified in rules 3(2) and (3).

Under rule 4, each leviable body is required to pay a proportion of leviable Board expenditure which is based on the number at the specified date of the persons authorised by it to carry on reserved legal activities. The proportion of leviable OLC expenditure which a leviable body is required to pay under rule 5 is based on the number of service complaints made to the body in the period starting on 1st January 2007 and ending on 31st March 2009. Rules 4 and 5 also provide for adjustments of the amounts payable in order to take account of materially disproportionate levels of expenditure that are attributable to any particular leviable body.

Rule 6 requires leviable bodies to provide the Board with the information necessary for it to calculate the proportions described in rules 4 and 5. Rule 7 requires that, except in certain specified cases, the levy must be paid in full no later than 31st March of the 12 month period to which it relates. Interest is payable under rule 8 in the event of any late payment.

An impact assessment in relation to the levy is available from the Legal Services Board, Victoria House, Southampton Row, London WC1B 4AD or at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk).

## 9 Summary of all questions

- 9.1 **Question 1:** Do respondents agree that the LSB's levy should be calculated on the estimated leviable expenditure and paid by 31 March 2011?
- 9.2 **Question 2:** Do respondents agree that the Legal Ombudsman's levy should be calculated on the estimated leviable expenditure and paid by 31 March 2011?
- 9.3 **Question 3:** 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 costs burdens to the LSB, ARs and individual regulated entities and individuals?
- 9.4 **Question 4:** 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?
- 9.5 **Question 5:** Do respondents consider the number of authorised persons per Approved Regulator approach is the most appropriate way of calculating the LSB's levy?
- 9.6 **Question 6:** 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?
- 9.7 **Question 7:** 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)?
- 9.8 **Question 8:** 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?
- 9.9 **Question 9:** What are your views on the proposed approach for the cancellation of designation of an Approved Regulator?
- 9.10 **Question 10:** What are your views on the proposed approach with regard to ensuring that 100 per cent of the levy is collected from all the remaining Approved Regulators?
- 9.11 **Question 11:** What are your views on the proposed approach with regard to the levy arrangements for new Approved Regulators?

- 9.12 **Question 12:** Is the proposed payment date (by 31 March) workable for Approved Regulators?
- 9.13 **Question 13:** Do the draft rules accurately reflect the preferred approach (as set out in the consultation paper)?

<b>Title:</b> <b>Legal Services Act 2007 levy - apportionment of operational costs</b>  <b>Lead department or agency:</b> Legal Services Board  <b>Other departments or agencies:</b> Office for Legal Complaints ("Legal Ombudsman")	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b> 08/07/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Edwin Josephs 020 7271 0084 edwin.josephs@legalservicesboard.org.uk	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

Sections 173 and 174 of the Legal Services Act 2007 ("LSA") require the Legal Services Board ("LSB ") to make rules in relation to the apportionment of the levy on Approved Regulators ("ARs") for both the establishment and ongoing costs of the LSB and the Office for Legal Complaints (please note that this Impact Assessment will refer to the Office for Legal Complaints as the "Legal Ombudsman", but the leviable costs will reflect the the leviable costs for the Office as a whole and not just the ombudsman scheme). The levy and the fact that the legal profession will meet the costs of the two organisations is something that Parliament has agreed to, based on the regulatory impact assessment produced at the time the LSA was passed into law.

**What are the policy objectives and the intended effects?**

The policy objectives and intended effects are to provide for the apportionment, in accordance with "fair principles", of all leviable expenditure for the operational costs of the LSB from 1 April 2010 onwards and for the Legal Ombudsman from when it becomes fully operational in late 2010 onwards.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

The base case assumes a levy of costs. The options are:

- apportioning the LSB's leviable operational costs by reference to the number of Authorised Persons regulated by each AR; and apportioning the Legal Ombudsman's leviable operational costs by reference to the number of complaints ARs have received against Authorised Persons that they deal with.

And provisions for the following scenarios:

- apportioning any costs incurred by the LSB and/or the Legal Ombudsman in undertaking "business not as usual" activities;
- apportioning costs if an AR's designation is cancelled;
- apportioning costs if an AR becomes bankrupt; and
- apportioning costs where the Lord Chancellor designates a new body to become an AR.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will not be reviewed
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Not applicable

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible SELECT SIGNATORY:..... Date:.....

# Summary: Analysis and Evidence

# Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
The 10 current ARs will pay the levy. These are the Law Society, the Bar Council, the Chartered Institute of Patent Attorneys, the Council for Licensed Conveyancers, the Institute of Legal Executives, the Institute of Trade Mark Attorneys, the Faculty Office, the Association of Law Costs Draftsmen, the Association of Chartered Certified Accountants, and the Institute of Chartered Accountants of Scotland.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
For the LSB, this methodology provides a simple and fair methodology for levy for the operational costs. The methodology is transparent and clear. For the Legal Ombudsman, the methodology involves a minimum amount of data collection and is proportionate. It provides an incentive for ARs to deal with complaints in-house.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>	<b>Yes/No</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		01/01/2011			
Which organisation(s) will enforce the policy?		Legal Services Board			
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		Yes			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.



## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<u>Legal Services Act 2007</u>
2	The Levy – funding legal services oversight regulation, Consultation Paper
3	The Legal Services Act 2007 (Levy) (No. 2) Rules 2010 – draft Statutory Instrument
4	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

## Introduction and Background

Sections 173 and 174 of the LSA require the LSB to make rules in relation to the levy on ARs for both the establishment and ongoing costs of the LSB and the Legal Ombudsman.

Those directly impacted by the levy will be the current ARs and those in future who choose to be ARs either to solely regulate Authorised Persons or to also be Licensing Authorities for Alternative Business Structures.

## Scope of the Impact Assessment

The scope of this Impact Assessment is very narrow. The decision to levy the ARs has already been dealt with in consultation documents, independent reviews, White Papers and parliamentary debates. The LSA requires the LSB to apportion the levy between ARs. This Impact Assessment deals solely with the apportionment mechanic for the leviable operational costs.

## Scope of the proposals

Please refer to the Consultation Paper for details of the proposal.

The 10 current ARs will pay the levy. These are the Law Society, the Bar Council, the Chartered Institute of Patent Attorneys, the Council for Licensed Conveyancers, the Institute of Legal Executives, the Institute of Trade Mark Attorneys, the Faculty Office, the Association of Law Costs Draftsmen, the Association of Chartered Certified Accountants, and the Institute of Chartered Accountants of Scotland.

## Cost Benefit Analysis

### **BASE CASE / OPTION 0 (“Do Nothing”)**

The options that we have focussed on in the Consultation Paper deal with how the LSB and the Legal Ombudsman will apportion the costs between the different ARs. The LSA requires the LSB and Legal Ombudsman to recover its costs via a levy and apportion the levy between the ARs. Therefore the base is to implement a levy. This impact assessment therefore only looks at the fairness of different methodologies. The base case is the same as the options, so there are no monetisable costs or benefits of different options.

## LSB’s options

### **OPTION 1 – Leviable operational costs for the LSB**

This option apportions the costs relating to the LSB in accordance with the regulatory risk posed by each of the ARs of not complying with the Regulatory Objectives as defined in the Act.

#### *Costs*

In order to adopt a risk-based approach, the LSB would need to quantify the likely detriment – in terms of both degree of severity and breadth of impact – if things went wrong in the regulation of a specific profession and/or activity. This would involve gaining a detailed understanding of the different types of regulated activities which members of a particular profession participate in and how they are currently regulated. An objective assessment of how well different ARs are performing in carrying out these duties would also be needed.

It would take considerable time and a high degree of work by ARs to identify the data needed to allow apportionment on this basis. This would put a regulatory burden on them and the people they regulate. The cost of the LSB undertaking the research needed to verify the information given by ARs to determine regulatory risk in a way that could be considered objective to all ARs would also be considerable.

#### *Benefits*

At first glance, this would seem one of the fairest ways to apportion the levy. However, as noted above, there are a number of disadvantages in terms of creating a methodology to measure regulatory risk. Therefore there is no guarantee that this is the fairest option.

### **OPTION 2 – Leviable operational costs for the LSB**

This option apportions the costs relating to the LSB in accordance with the volume of activity for the LSB generated by each AR.

#### *Costs*

The LSB would only be able to do this with any accuracy on a retrospective basis, so that the previous year's work drives the next year's apportionment. This makes it difficult to use for initial implementation and running costs.

#### *Benefits*

This method would fit the principle that the "polluter pays". This may be simpler to measure than Option 1 and is 'fair' in the sense that those ARs creating more work for the LSB pay more.

### **OPTION 3 – Leviable operational costs for the LSB**

This option apportions the costs relating to the LSB based on the number of members of a profession who hold practising certificates or who are otherwise registered to carry out reserved legal activities with an AR.

#### *Costs*

This method does not reflect the "polluter pays" principle but in the short-term it provides an objective, robust and fair approach.

#### *Benefits*

This is a simple approach that requires a minimum amount of data collection for the ARs and verification of the data by the LSB. Using this method the LSB can clearly define the costs for each AR from the outset, which will enable them to adjust practising fees and their internal processes as part of their normal business planning cycles. The levy would not need to be retrospective.

The approach meets the definition of fair principles as it is transparent and clear to all regulators, as we are following a clear methodology which does not place extensive regulatory burdens on the ARs in terms of data collection. In terms of proportionality, it takes account of the relative sizes of the regulators and uses a consistent methodology between them. This approach is also consistent with the approach used to calculate the LSB's operational costs between 1 January 2010 to 31 March 2010.

### **Legal Ombudsman's options**

#### **OPTION 1 – Leviable operational costs for the Legal Ombudsman**

This approach apportions the costs relating to the Legal Ombudsman based on the number of members of a profession who hold practising certificates or who are otherwise registered to carry out reserved legal activities with an AR.

#### *Costs*

The approach takes no account of the relative number of complaints that are currently generated and the reasons behind the creation of the Legal Ombudsman. This does not reflect a proportionate or targeted response.

#### *Benefits*

This is a simple approach that requires a minimum amount of data collection in the first year for both the ARs the LSB and the Legal Ombudsman.

#### **OPTION 2 – Leviable operational costs for the Legal Ombudsman**

This approach apportions the costs relating to the Legal Ombudsman based on the number of complaints ARs have received about Authorised Persons for a three-year period (2007 to 2009).

#### *Costs*

The number of complaints that will be used to calculate the levy will be fixed for the next two to three years. This is because there may be a lag between consumers lodging complaints against respondents (ARs) and the Legal Ombudsman undertaking these cases. As such, we anticipate that it may take up to two to three years after the Legal Ombudsman becomes operational before it has this data.

#### *Benefits*

This is a simple approach that requires a minimum amount of data collection for ARs, since they already hold data on the number of complaints against Authorised Persons that they deal with.

This approach is proportionate and targeted as those responsible for the majority of complaints will be responsible for the costs of the setting-up of the new complaints handling mechanism. It provides an incentive to ARs to encourage firms or Authorised Persons to resolve their complaints in-house and therefore reduce the cost burden associated with the Legal Ombudsman. It is also a consistent mechanism that is proportionate, as it reflects the way complaints are handled at the point of implementation. This approach is consistent with the way in which the implementation costs for the Legal Ombudsman have been apportioned.

### **Specific scenarios for the LSB and the Legal Ombudsman**

In addition to proposing arrangements for the apportionment and collection of the levy during a “business as usual” financial year, the LSB and the Legal Ombudsman are also consulting on a series of proposals for specific scenarios. The scenarios are apportioning and collecting the levy where:

- An AR’s behaviour generates disproportional work to the LSB and/or Legal Ombudsman;
- An AR’s designation is cancelled with regard to one or more, or all, of its reserved legal activities;
- An AR becomes bankrupt; and
- The Lord Chancellor designates a new body to become an AR.

### **SCENARIO 1 – Disproportional AR-specific costs for the LSB and the Legal Ombudsman**

This approach apportions all of the costs to an AR if those costs are in addition to the LSB’s or the Legal Ombudsman’s “business as usual” activities; the costs are attributable to a specific AR; and that the benefits (if any) of the LSB undertaking this activity is would not be enjoyed by the other ARs or consumers.

#### *Costs*

There may be a possibility that the specific costs that are levied on an AR, in particular the smaller ARs, may not be proportionate to their size. Therefore, there may be a possibility that the AR may not be able to pay this component of the levy.

#### *Benefits*

The approach reflects the “polluter pays” principle. The LSB and/or the Legal Ombudsman will advise ARs in advance to issuing an invoice for any such costs.

### **SCENARIO 2 - Cancellation of designation as an AR**

This option proposes that if the cancellation of designation is in relation to all reserved legal activities, any unpaid levy amounts should be paid in time of the cancellation order is made. However, if the cancellation is in relation to one or more, but not all, of the reserved legal activities, any unpaid levy amount remains payable in accordance with the levy cycle.

#### *Costs*

There are no identified costs, as option relates to the timing of the payment, not the calculation of the payment.

#### *Benefits*

There are no identified benefits, as option relates to the timing of the payment, not the calculation of the payment.

### **SCENARIO 3 – bankruptcy of an AR**

This option proposes that if an AR becomes bankrupt, the total cost of the levy will be recouped from the other ARs.

#### *Costs*

The cost of this proposal is that the other ARs will be required to contribute to the bankrupt AR’s levy. The financial impact on the other ARs is dependent on the levy contribution of the AR that has become bankrupt.

#### *Benefits*

The benefit of this proposal is that it ensures that all of the LSB and the Legal Ombudsman’s leviable operation costs will be recouped. As it is very unlikely that the bankrupt AR would be able to pay its levy contribution, this approach shares the burden among the other ARs.

## **SCENARIO 4 – new ARs**

This option proposes that if the Lord Chancellor designates a new body, after 1 April of a given year, to become an AR that that AR will not be required to contribute to the payment of the levy.

### *Costs*

The cost of this proposal is that the other ARs will be required to contribute to the payment of the levy without any contribution from the new AR. The financial impact on the other ARs is dependent on the levy contribution of the new AR if it were to contribute to the payment for that year.

### *Benefits*

The benefit of this approach is that it is unlikely that a new AR would have many, or any, Authorised Persons or complaints made against it at the time it is designated. Therefore, it is proposed that the levy should not be imposed on the new AR in its first year of operation.

## **SUMMARY OF OPTIONS**

The LSB and the Legal Ombudsman prefer:

- Option 3 for apportioning the LSB's operational costs;
- Option 2 for apportioning the Legal Ombudsman's operational costs;
- Scenario 1 for apportioning the LSB's and the Legal Ombudsman's AR specific costs;
- Scenario 2 for apportioning the LSB's and the Legal Ombudsman's costs where there is a cancellation of designation order;
- Scenario 3 for apportioning the unpaid LSB and the Legal Ombudsman's levy of an AR who has become bankrupt; and
- Scenario 4 for apportioning the LSB and the Legal Ombudsman's levy where the Lord Chancellor designates a new body to become an AR.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p> <p>A PIR will not be conducted as the Legal Services Act 2007 requires the LSB to recoup its leviable expenditure via a levy on the legal industry.</p> <p>Instead, the LSB and the Legal Ombudsman intend to internally review their respective final options, including the proposals that affect each organisation equally, annually, and undertake a fundamental review of the options for the LSB and the Legal Ombudsman 2013-14. This fundamental review will allow the LSB and the Legal Ombudsman to take account of any lessons learnt.</p> <p>As part of this, the LSB and the Legal Ombudsman will also review its approach to the levy (using the more sophisticated information that will then be available) and look if there would be other ways of calculating its leviable costs, for instance on an entity basis. In addition, by then the Legal Ombudsman will have data on case fee revenue, which is likely to assist in calculating and apportioning its leviable costs.</p> <p>Furthermore, as it is currently expected that Licensing Authorities will approve the first Alternative Business Structure entities in October 2011, it is therefore likely to be necessary to reassess whether to base the levy on the LSB's leviable expenditure on the number of entities regulated as well as (or even, instead of) the number of authorised persons.</p> <p>Therefore, the review will focus on the methodology of the levy and not the policy of whether there should</p>

be a levy.

Add annexes here.