

From: The Chief Executive

LEGAL SERVICES

26 JUN 2009

BOARD

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Legal Services Board
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25 June 2009

Dear Edwin

“The Levy: funding legal services regulation”

First of all, can I thank you for meeting representatives of IPReg, CIPA and ITMA recently and giving us the opportunity to put forward our initial views on the proposals set out in the above consultation document. I have also been asked to thank the LSB for the informal discussions that have taken place on this subject between the LSB and IPReg, ITMA and CIPA. This has meant that there were few surprises in the document when published. The views below represent confirmation of those expressed by IPReg and ITMA. CIPA will let you know in due course if they too support the points below.

The comments are set out under the questions posed by the document:

1 – Can respondents see any areas where defined “fair principles” could be improved?

No. The principles themselves are ones which are sensible and reasonable and can easily be used as the basis for determining the Levy. We also consider that the way in which *transparent, accountable, proportionate, consistent, targeted*, have been applied by the LSB in these proposals seem fair and reasonable to all. They are, in particular, and very importantly, ones which all stakeholders would recognise as fair and measurable.

2- Are respondents content for the collection mechanisms to be the subject of an MOU between the LSB and each Approved Regulator? What might an MOU contain?

An MOU is a sensible way to approach the collection mechanisms. In particular, the MOU should cover the timetable for the agreement of the Levy and any consequences for practice fees. This will be important for IPReg where there will need to be consultations with two representative bodies as well as members of two professions. Also, if we are to meet the LSB timetable for payment each year, the LSB will need to meet ours for approval of any variation to practice fees. For example, if the LSB Levy (in respect of each individual regulator) is not determined by, say, May, then the MOU should provide for the Levy to be no more than that applied in the previous year. In that way the IPReg budget and subsequent practice fee proposals can proceed without delay.

3 and 4 – Comments on timetable for first year? Other options?

The document proposes the payment of the Levy by February 2010. You explained that this was necessary in order that the monies for the start up costs could be transmitted to the Ministry of Justice by the end of the financial year. From our standpoint, the Levy is likely to be included in the 2010 practice fee but it is most unlikely that we will have received sufficient fees in time to pay the Levy by the proposed date. We may therefore miss the date or be in a position to make only a part payment then.

5- Views on staged payments?

The LSB is proposing to collect the first Levy over three years on the basis of 70%, 20% and 10%. This will clearly benefit some, in particular those regulators which will have to pay a share of the OLC start up costs. From our stand point, however, the need to collect this Levy over three years is likely to add to the administrative costs of IPReg and in the consultation document issued by IPReg on practice fee structure,(and with the agreement of CIPA and ITMA) we have proposed that we should collect the whole sum next year. There does not appear to be any objection to this – but the consultation is not yet closed. We would therefore wish to have the provision to pass the whole amount to the LSB in 2010.

6 – Do respondents agree that there are no suitable metrics for the regulatory risk attached to Approved Regulators which could be used to apportion LSB costs?

7 – Do respondents agree that there are no suitable metrics for the assessment of volume activity to enable it to be used as an apportionment tool for 2010?

8 – Views on apportionment based on per capita?

9 – Any other options?

These questions are linked. There are no readily available metrics to help determine the apportionment of LSB costs and therefore we can agree that the per capita approach is a

fair and reasonable basis for determining the Levy in relation to the LSB's start up costs and first quarter running costs in the first year. It enables the LSB and the regulatory arrangements for Approved Regulators to be put in place and uncertainty quickly removed. However, this does not mean that metrics should not be used in the future to help determine the proportion of the LSB's costs to be met by each Approved Regulator. We are pleased to see that the LSB have not ruled this out. From the point of view of the Patent Attorney and Trade Mark Attorney professions, the LSB is unlikely to be troubled by any regulatory professional policy, rules or independence issues which might put IPReg on the LSB's radar and we would want that reflected at the end of each year in terms of the Levy to be applied the next year. Even the application of simple statistics on "time spent" on individual regulator's issues might be an indicator of the burden imposed on the LSB, and therefore on its running costs, as time moves on and the regulatory rules and framework are in place. This topic is one which might be the subject of a separate workshop with Approved Regulators.


10 – Do respondents agree that apportionment based on a per capita basis for OLC costs does not meet the "fairness principles?"

11- Views on the proposal that set up costs are met by those the subject of most complaints?

12 – Any other options?

We agree with the views reached by the LSB in relation to the apportionment of OLC. As representatives of two of the smaller professions, neither of whom have a track record of service (or conduct) complaints of any significance it would be unfair for registrants in the IP field to have to contribute to the start up costs of the OLC. The proposals are sound and have an intellectual rigour. In terms of future running costs of the OLC, they will be met by those, including those on the Patent and Trade Mark Attorney registers, who are the subject of service complaints which are upheld. That will be a fair and reasonable approach and one which was envisaged from the start.

Please let me know if you have any questions on these submissions.

Yours sincerely

Mike Knight