

## THE LEVY – FUNDING LEGAL SERVICES OVERSIGHT REGULATION

Response on behalf of the Master of the Faculties to consultation on the proposed rules (leviable optional expenditure) to be made under sections 173-174 of the Legal

### Services Act 2007

We welcome the opportunity to respond to this consultation by the Legal Services Board and the Legal Ombudsman.

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

Response: Yes.

**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?

Response: Yes.

**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?

Response: Not at this stage. However, we are concerned that all ABS related costs be ring-fenced and paid by Licensing Authorities. This is because the authorised persons who seek to gain from ABS should bear the burden of paying for their regulation. These monies should be recouped from Licensing Authorities through their licensing fees. The LSB should determine what areas of their work relates only to ABS, and recoup those costs from the Licensing Authorities only.

**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?

Response – No, we consider that apportioning the levy on the basis of the volume of activity generated by the regulator would be difficult to calculate and that the necessary time-keeping and record collection would add to LSB costs. However, see our comments in relation to ABS related costs above.

**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?

Response – Yes. We agree with the LSB that apportioning the levy on the basis of the number of authorised persons per approved regulator is the most appropriate approach because it provides greater certainty as to the amount each Authorised Regulator has

to pay in each year. The Faculty Office needs to know in advance of each financial year the likely level of the levy as it has no reserves from which to pay an unexpectedly higher amount.

**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?

Response – No. we consider that the number of complaints made against notaries are so few that it would be a disproportionate cost to the notarial profession to apportion the levy on a per capita basis. Unlike the 'risk-based' and 'volume-based' approaches to apportioning the levy, complaints statistics are readily available on which to make this calculation.

**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)?

Response – We have not given this matter serious investigation and would not wish to comment.

**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?

Response – While we agree that in principle those Regulators which cause an extraordinary burden on LSB resources should recompense the LSB for that volume of work, we have not given serious investigation to the question of how to quantify this and would not wish to comment.

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

Response – We have not given this matter serious investigation and would not wish to comment.

**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?

Response – The Faculty Office has no reserves from which to pay a substantially higher levy than that budgeted for a particular financial year. If one Approved Regulator became bankrupt the other Regulators were made to pay the difference, it would not be possible to make such a contribution without notice. The LSB should make arrangements with the Ministry of Justice to borrow the necessary shortfall in the event of an Approved Regulator suddenly being made bankrupt, and, if necessary, recoup this money from the Approved Regulators in the subsequent financial year.

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

Response – We agree that the suggested approach taken by the LSB is reasonable.

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

Response – Yes, provided that the apportionment takes the form recommended by the LSB (ie the magnitude of the levy falls within a certain anticipated range). Otherwise there might be a need to postpone the payment date until the following financial year.

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

Response – Yes.

FACULTY OFFICE

29th September 2010