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By Post & Email (Consultations@LegalServicesBoard.org.uk)

Dear Ms Hannah

The Levy: Funding Legal Services Regulation. Consultation on Proposed Rules to be made under Sections 173 & 174 of the Legal Services Act 2007

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the LSB's Consultation on the levy has been prepared by the CLLS's Professional Rules and Regulation Committee. The Committee is made up of a number of solicitors from twelve City of London firms who have specialist experience in the area of the regulation of the profession.

We have the following comments on the consultation:

General Comment

1. Obviously the Consultation is most directly relevant to Approved Regulators and for this reason we have not responded to all of the questions and issues raised in the Consultation. Nevertheless we would wish to make some observations on the part of members of the CLLS given that our membership will undoubtedly bear a proportion of the levy in the form of increased practising certificate costs.

Question 5 – Timetable for recovery of implementation costs

2. We do not agree with the proposal that the implementation costs should be 'front loaded' in the manner suggested by the LSB in the Consultation. It has to be borne in mind that an objective of regulatory reform is to encourage a strong, diverse and effective profession for the benefit of consumers and participants alike. We do not think that regulatory objective, nor the objective of promoting competition, is likely to be furthered by (indirectly) saddling current market participants with excessive costs in the short term if this is avoidable.

3. We are in the middle of a profound economic slowdown that has been felt strongly by legal professionals (as well as others in the economy), manifesting itself in a reduction in profits, loss of jobs and the closure of some practices. It is to be expected, in line with Government projections, that economic conditions will ameliorate beyond the next twelve to eighteen months. It therefore seems unnecessarily onerous to front load cost recovery at a time of economic crisis when a three year period for recovery of costs has been envisaged.

4. We would advocate a loading of costs exactly opposite that proposed, namely 10% in the first year, 20% in the second year and 70% in the final year. Our reasoning in this regard is that considerations of fairness and competition demand that the recovery of the levy should be achieved in a manner that (as far as possible) avoids creating a 'free rider problem'. The Legal Services Act 2007 is intended to facilitate entry of new providers of legal services into the market and obviously the LSB is working on the ABS regime by which alternative providers of capital will be able to bring offers to the market in the next couple of years. It would be unfair if incumbent providers of legal services were saddled with front-loaded start up costs for the new regime that were disproportionate to those to be contributed by ABS and other market entrants in later years.

Question 6 – Regulatory risk as an apportionment tool?

5. We agree that there are no suitable metrics to enable regulatory risk to be used as an apportionment tool for LSB costs in the short term.

Question 7 – Use of present activity as a metric for cost recovery?

6. We would accept that there are no suitable metrics based on the assessment of present activity which the LSB could use as an apportionment tool for costs to March 2010. However it is our view that the volume of activity may very well be a suitable metric in relation to the apportionment of operating costs going forward.

7. There will be an element of LSB costs that should be prorated across all regulators; because they are not costs associated with the activity of one regulator in particular (for example costs associated with the LSB's strategic efforts to increase access to justice). Nevertheless we think the principle ought to be that LSB costs associated with the activities (for example rule propagation) of individual regulators ought to be borne by the Approved Regulator in question and its underlying constituency.

8. We accept that the LSB may incur direct costs associated with appraising the rules created by a 'smaller' Approved Regulator that may not be substantially less than the costs associated with appraising the rules created by the SRA, but to prorate distinct and identifiable costs attributable to the work of one Approved Regulator across all Approved Regulators would seem to us to be an unreasonable cross subsidisation of one group of regulated practitioners by the others.

Question 8 – Cost recovery on the basis of number of authorised persons

9. We agree that apportionment of costs based on the number of authorised persons seems to be the most appropriate mechanism for the recovery of LSB implementation costs.

Questions 10 & 11 – Cost recovery regarding the OLC

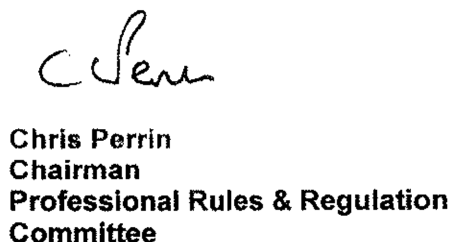
10. We agree that it would be unfair, given the historic instance of complaints, for the costs associated with the establishment of the OLC to be apportioned on the basis of numbers of authorised persons. Further, to apply the costs on the basis of the incidence of complaints goes some way towards enshrining the concept of 'polluter pays', which we think is very important to the fair and effective running of any new complaints regime.

11. Nevertheless we do not agree with the proposal that costs should not be borne by Approved Regulators who represent authorised persons who have been involved with less than 0.1% of complaints received.

12. We recognise that the sums to be paid by those Approved Regulators who represent these small categories are comparatively trivial by reference to the sum, for example, to be paid by The Law Society. However we think it is an important point of principle that (in relation to costs that can be clearly and distinctly delineated) there should be no cross subsidisation by one group of authorised persons of any other. There seems to be no basis for this other than mere administrative convenience and we would be concerned were such a precedent to be set regarding the differential treatment of authorised persons at such an early stage in the evolution of the new regulatory regime.

We trust these comments will be found to be helpful.

Yours sincerely



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