

Office for Legal Complaints  
7<sup>th</sup> Floor  
Victoria House  
Southampton Row  
London  
WC1B 4AD

7 December 2009

Dear Sir

### **Setting a fair case fee**

ACCA - the Association of Chartered Certified Accountants – welcomes the opportunity to comment on the above consultation. These comments are also relevant to the proposed section six of the Scheme Rules.

It has been assumed that the structure of charging for the operations and administration of the Office for Legal Complaints (OLC) will apply to all approved regulators. Although ACCA is to become an approved regulator, this will be in respect of probate services only, and members of ACCA would not consider themselves to be members of the 'legal profession'. Many of our concerns regarding this consultation exist because there is a tendency to include all authorised persons under the umbrella of 'the legal profession'.

We note that, based on informal discussions, the OLC prefers to start operating with low case fees (recovering only 10% of costs in this way, and 90% via the levy). This would disadvantage ACCA and its members, as ACCA will only be an approved regulator in respect of probate work. This issue might be more acute during the period before ACCA starts to authorise its members, as ACCA members would not be using the ombudsman service during that time. In fact, even when ACCA starts to authorise its members to perform probate work, in the case of each authorised person, probate work will only be a small part of the professional services they provide. We are concerned that the levy will place a disproportionate burden on members of ACCA in that they will be effectively paying for cases brought against other approved persons, through the levy.

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On page 24 of the consultation document, you state that “it is not within the intention of the OLC to promote a blame culture via a ‘polluter pays’ principle”. However, we suggest that a ‘polluter pays’ principle is usually respected by the public, and a blame culture does not necessarily ensue. We are also concerned that setting low fixed case fees and allowing ‘two free cases’ per year gives the appearance of charging as little as possible in case fees and loading costs onto the levy. We do not believe this was what was intended by the legislation.

We support the OLC’s wish to minimise unnecessary operational and administrative complexity and costs. We also believe that the case fee must be high enough to encourage good in-house complaints handling before complaints are raised with the OLC. Where cases are brought to the OLC, the fee should be calculated to encourage early and informal resolution.

As mentioned previously, ACCA is to become an approved regulator in respect of probate services only. Although the OLC will be concerned with a broad range of legal service complaints, it is only with regard to probate services that it will be concerned with members of ACCA. As the objective of this consultation is ‘setting a fair case fee’, we suggest that this can only be achieved by way of a ‘carve-out’ in respect of those approved regulators, such as ACCA, for whose members legal services are limited to probate services and this work constitutes only a relatively small source of income.

We acknowledge that the potential level of case fees incurred must not deter lawyers from taking on contentious matters that might result in a high number of complaints. In other words, the fee structure chosen must not affect access to justice. However, we remain unconvinced by the relative significance of this argument, as case fees must be high enough to encourage in-house complaints resolution, have regard to the purpose of the legislation, and be fair to all authorised persons.

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The OLC prefers option 1b (a flat fee with a small number of 'free' cases). However, the administrative costs associated with having a sliding scale have not been explained in the consultation document, and neither have the advantages of having a number of free cases. (Having a sliding scale may, in fact, reduce case-handling costs for the OLC.) We note the OLC's view that deciding on actual case fees under the sliding fee approach could prove contentious. However, the same could be said in any case where a waiver is not granted.

If the case fee is too low, the levy will be too high. In the case of ACCA, the levy will be passed on to those members who are authorised to provide probate services. This may deter members from seeking authorisation which, in turn, would act as a barrier to increasing competition in the market for probate services (and legal services in general).

The OLC intends to review the fee structure (and level of fees) within three years. It is likely that the proportion of costs recovered by way of case fees will increase at that time. This will give rise to a reduction in the levy which must be passed on by the approved regulators to their members. This apparent volatility may be considered undesirable. Therefore, higher case fees now are preferable, together with an earlier review of the basis for charging fees.

I hope you will find these comments helpful. If you wish to discuss any of the points raised further, please do not hesitate to contact Ian Waters, Regulatory Policy Manager (tel: 020 7059 5992, email: [ian.waters@accaglobal.com](mailto:ian.waters@accaglobal.com)), in the first instance.

Yours faithfully,



Sundeeep Takwani  
Director – Regulation