

**Office for Legal Complaints consultation paper
'Setting a fair case fee'**

Response from the Solicitors Regulation Authority

November 2009

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**Office for Legal Complaints consultation paper “Setting a fair case fee”
(October 2009)**

Response from the Solicitors Regulation Authority

1. Introduction

- 1.1 The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales. We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors’ firms and their staff.
- 1.2 We welcome this consultation paper from the Legal Services Board (LSB) and are supportive of the broad approach. Our specific comments are set out below.

2. SRA comments

Q1. Do you think our approach to the case fee is fair? Please give your reasons.

- 2.1 We agree that the general approach taken by the OLC to determine the case fee is appropriate. We agree with the OLC’s opinion (on page 3 of the consultation paper) that it should “...*start the initial phase of OLC operation with low case fees, recovering only a small amount of the OLC cost via fees...*”, and agree also that the fee should be re-visited soon after the OLC is operationally established and once demand and resource levels experienced by the OLC are clearer.

Q2. Do you think there is likely to be a potential impact on small firms or sole practitioners, or specific areas of the law which might attract more complaints or potential impact on diversity within the profession? Please give your reasons and provide any evidence that you think will help us measure any impact.

- 2.2 We are concerned by the potential for disproportion where case fees could be levied increasingly toward small firms or sole practitioners, or toward lawyers and firms operating within more contentious areas of the law that may statistically attract more complaints compared with other areas.
- 2.3 However, the fact that one field of law by its very nature gives rise to more client complaints than another should not automatically lead to an increasing number of complaints being upheld against lawyers operating within that field, or more case fees being levelled at them. Providing that the OLC and ombudsmen make decisions consistently and proportionately and their decisions are seen to be based upon sound judgement, we believe that the potential for disproportion can be minimised.
- 2.4 The basis for this already lies within the Act at section 136(2), as the OLC itself identifies on page 2 of the consultation paper, whereby ombudsmen must be satisfied that a lawyer had taken ‘*all reasonable steps to try to resolve the complaint*’ before waiving a case fee. The OLC should set in place a clearly-defined set of protocols upon which ombudsmen must base their

decisions and exercise of judgement regarding whether or not a lawyer has taken 'all reasonable steps' toward early resolution. We do not believe it is sufficient for the OLC to say simply it would consider the facts of each case on its merits.

- 2.5 We note that on page 15 of the consultation paper the OLC flags up the case fee waiver as a key mitigating factor for minimising disproportionate impact under option 2a, and we agree that it is right to do so.

Q3. Do you agree with the option of structuring the case fee as a flat fee with two free cases per firm per year? Please give your reasons why or why not.

- 2.6 We agree with the option of having a flat fee applicable to all lawyers under the auspices of the Act. A sliding scale approach has potential for higher case fees to be routinely imposed upon practitioners in certain areas of law, and gives rise therefore to the potential for disproportionate case fee practices to emerge.
- 2.7 We support the OLC's intended approach to allow two free cases per year. We agree that this is consistent with the practices of other ombudsmen services and that it provides support for legal services practitioners that may find themselves particularly vulnerable to complaints being made due to the nature of the area of law in which they work.

Q4. Do you think that £200 - £400 pounds for the case fee is at the correct level? Please give your reasons why or why not.

- 2.8 We believe this represents a suitable starting point for the OLC (as it will be reviewed in due course in line with the approach set out on page 3 of the consultation paper), and agree that setting the case fee between these levels is supportive of the OLC's intention on page 2 of the consultation paper that it "*...will not use case fees as a form of punishment.*"

Q5. Do you have any comments on the attached initial consultation impact assessment? Do you think there is likely to be any other potential impact of implementing the case fee that we have not captured in the attached impact assessment? Please give your reasons and provide any evidence that you think will help us measure any impact.

- 2.9 We have no further comments on the initial impact assessment.

Q6. Are there any other points or issues you wish to raise in relation to the case fee level or structure. Do you think there is anything missing? Is there anything you disagree with? Please give your reasons.

- 2.10 We have no additional points to make.

**Solicitors Regulation Authority
November 2009**