



SRA (Costs of Investigations) Regulations 2009

The Institute of Legal Executives

The Institute of Legal Executives (ILEX) is the professional and leadership body representing Legal Executive lawyers and has a membership of 22,000 students and practitioners.

Alongside Barristers and Solicitors, Legal Executive lawyers are recognised under the Legal Services Act 2007 as qualified lawyers. Recent developments also mean that Legal Executive lawyers are eligible for prescribed judicial appointments, including eligibility as first tier judges of tribunals.

Changes in legislation also permit Legal Executive lawyers to become partners and to form partnerships with other lawyers.

Fully qualified and experienced Legal Executives lawyers are able to undertake many of the legal activities that solicitors do. For example, they will have their own clients (with full conduct of cases) and they can undertake representation in court where appropriate.

Legal Executive lawyers must adhere to a code of conduct and, like solicitors, are required to continue training throughout their careers in order to keep themselves abreast of the latest developments in the law.

ILEX provides policy response to Government consultations in order to represent its members and the public interest.

1. This Response presents the joint views of Institute of Legal Executives (ILEX) as an Approved Regulator under the Legal Services Act 2007, and its regulatory arm ILEX Professional Standards Limited (IPS). Views were shared and with no significance difference of opinion between the two organisations. As such, joint response is tendered in respect of this consultation paper.

ILEX Professional Standards

2. IPS is a regulatory company established by the Institute of Legal Executives to take responsibility for the regulation of Legal Executives. ILEX is an Approved Regulator under the terms of the Legal Services Act and is also a qualifying regulator in respect of immigration advice and services. ILEX and IPS are committed to regulating Legal Executive businesses and businesses in which Legal Executives are Partners and Directors by 2012. IPS will be responsible for establishing that regulatory arrangements are appropriate for public protection and comply with the requirements of the Legal Services Act and any regulations made by the Legal Services Board under the Act.

Executive Summary

3. We recognise that the ability to charge for the costs of investigations is an important regulatory tool. The current “polluter pays” mechanism is based on the policy to ensure that those responsible for the costs of investigations are required to pay for them rather than spreading the costs among all practitioners, which is unjust to the good practitioners who do not generate such costs. To this end, ILEX agrees with the applicability of the ‘polluter pays’ mechanism against proven polluters.
4. Having accepted the appropriate principle, we feel, however, that the “polluter pays’ mechanism should still have regard to the government’s following principles of Good Regulation:
 - Proportionality - Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised;
 - Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny;
 - Consistent: Government rules and standards must be joined up and implemented fairly;
 - Transparent: Regulators should be open, and keep regulations simple and user-friendly and
 - Targeted: Regulation should be focused on the problem, and minimise side effects.

6. The remainder of this response will concentrate on the specific questions set out in the consultation, having regard to the above principles of Good Regulation.

Question 1

7. On the whole, the proposed changes are clear and transparent. However, we would like to see the methodology amplified further perhaps even published. Relatedly, the paper purports to use 'recent analysis' to justify a 3 band charging system linked to case-working hours. We feel it is important to publish this analysis so it can readily be ascertained how the proposed subscribed figures were arrived at.
8. At the moment, we feel that £300 for any complaint under two hours appears to be disproportionate in comparison to the proposed hourly rate after 16 hours of casework time. In our experience, complaints, other than 'holding out' or basic exam misconduct, very rarely exceed two hours of casework time. It follows, therefore, that the two hour band may need to be reviewed as being too small to be really applicable.
9. Given the above, we feel that there may be merit for the costs of investigations to be charged on an hourly basis. This proposal is given further credence by the fact that after 16 hours of casework time, an hourly rate becomes applicable in any event.
10. In terms of the actual investigation, we would like to see clarification as to whether the 'investigation' extends to reading documents and examining evidence.

Question 2

11. The evidence indicates that a high proportion of BME groups are concentrated in the smaller firms or sole practitioner groups: it follows therefore; the proposals may have a disproportionate impact on BME groups. We would suggest an impact assessment be carried out.

Question 3

12. We understand that it is the intention of the SRA to move to 'full cost recovery' from 2011. This we feel is a laudable aim and is consistent with the 'polluter pays' mechanism. However, it must be no more than a general rule. The general rule must be open to exceptions to capture such scenarios as envisaged by the consultation paper itself. The paper, however, fails to mention whether 'full costs recovery' can lead to a reduction in the practicing certificate.

Question 4

13. We have no further comments.

