



## **Approval of 2019 Practising Certificate Fee (PCF) application made by the Faculty Office to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

1. The LSB has approved an application made by the Faculty Office (“**FO**”) on behalf of the Master of Faculties (“**the Master**”) to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. The Master is an approved regulator and the FO is the regulatory arm to which the Master has delegated its regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)<sup>1</sup>. The Rules<sup>2</sup> set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](#) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application<sup>3</sup>.
5. This notice sets out the decision taken, including an assessment of the PCF application.

### **Overview of PCF application and decision**

6. The FO application for the approval of practising fees for 2019/20, sets out a new methodological approach for the PCF. The FO is seeking to move away from the existing model, whereby all notaries are charged a single flat fee, to a model which charges each notary based on the turnover generated by their notarial practice.

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<sup>1</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_Practising\\_Fee\\_Rules\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF)

<sup>2</sup> Ibid, Rules 10 and 11.

<sup>3</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_PCF\\_Rules\\_Guidance\\_June\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF)

7. The application states that a change in methodology is required in order to address a shortfall in income, which has arisen principally due to:
- increased costs of inspections
  - decreasing numbers in the profession
  - an IT modernisation programme (including implementation of a new document management system)
  - premises/building costs (this is part of an 8 year rolling plan of works to the premises).
8. The proposed fees for 2019/20 are:

| Turnover       | PCF (2019/20) | % notaries in band |
|----------------|---------------|--------------------|
| Up to £15,000  | £450          | 47.27%             |
| Up to £50,000  | £560          | 33.42%             |
| Up to £150,000 | £800          | 11.58%             |
| Up to £300,000 | £1,000        | 1.73%              |
| Over £300,000  | £2,250        | 5.99%              |

9. There are c750 registered notaries. The current flat fee for a PCF is £520. Therefore the change in PCF methodology will reduce fees for the 47% of the profession with an income of up to £15,000. The remaining 53% of the profession will pay a higher PCF.
10. The PCF for those earning over £300,000 is more than twice the amount for those earning between £150,000 and £300,000 and approximately four times the current PCF fee (£520). The FO states in its application that of the notaries with a turnover of over £300,000, the vast majority have a turnover of much more than that sum. At the lower end of the bracket, the fee represents just 0.75% of turnover and much less for those whose turnover is substantially greater.
11. The change in methodology is expected to result in a total of £428,626 being collected in 2019/20.
12. The LSB's decision is to approve in full the levels of the 2019/20 fee determinations for practising certificates charged to individual notaries as set out in the FO application for the approval of 2019/20 fees.

## **LSB assessment**

### Development of the overall budget and application

#### *Evidence that the regulatory body has led the development of the application*

13. The Faculty Office has no representative function. The budget and application have therefore been set by the regulatory body.

*Clarity and transparency of overall budget setting*

14. The LSB is satisfied with the budget setting process outlined in the application. The application clearly sets out the income and expenditure levels of the FO. The FO budget is based on:

- Income from:
  - annual practising certificate fees
  - admissions to the notariat in the FO's overseas jurisdictions (the Channel Islands, Gibraltar, Queensland and New Zealand) and a small income from annual registration from the Channel Islands
  - charging for the administration and consideration of applications to be enrolled on the notarial practice course at UCL (to assess the applicant's existing legal qualifications and/or experience) – these are highlighted as notarial packs and certifications of exemption in the budgets provided as part of the application
- Expenditure on:
  - levies for the LSB, OLC and the Office for Professional Body Supervision (OPBAS)
  - Legal Choices website
  - other direct expenses (e.g. the IT project, noting this will be completed in 2020).

15. As part of the application, the FO provided indicative budgets for the years ending 31 March 2020, 2021 and 2022. The FO expect a shortfall in the current financial year (-£28,854) followed by two years of surpluses (£58,113 for year ending 31 March 2021 and £54,520 for year ending 31 March 2022) which are intended to reduce the deficit and, in due course, provide a reserve.

*Evidence that immediate and medium term needs have been taken into account*

16. In January of each year the Master of the Faculty sets the priorities for the FO, which are published. The Master's priorities are directed principally to the FO and amount to a 'business plan' for the year whilst recognising that there will be other matters requiring attention that will arise throughout the year. FO priorities for 2019 are:

- to make further progress with the new IT upgrade
- to make progress with practice authorisation (entity regulation)
- to review the professional qualification
- to comply with the LSB (regulatory standards and diversity) action plans
- to review the regulatory regime in the Channel Islands and Gibraltar
- To revise overseas admissions documentation

17. The current shortfall had to be met from the non-regulatory arm of the FO. In the longer term, the Master and Registrar intend that the regulatory arm of the FO becomes fully self-funding and would look to build and maintain reserves equal to a full year's operational cost. The LSB expects FO to develop a documented reserves policy and for future PCF applications to include this alongside information on the progress the FO has made in relation to achieving this goal.

18. The LSB is satisfied that the application outlines the overall budget and it provided a proportionate level of detail about the proposed expenditure.

#### *Contingency fund arrangements*

19. The application confirms that the contingency fund (which is collected separately but set and collected alongside the PCF) is ring fenced to fund disciplinary activities. The amount of the contingency fund as at 31 March 2019 was £129,000 and will increase to £144,000 by 31 March 2020 via the 2019/2020 levy (subject to calls on this fund during this period).
20. The formal contingency fund is topped up annually. We queried this in the course of the application and the FO confirmed that £100,000 is the minimum level of funds the Master and Registrar deem prudent for the fund to hold in order to cover the costs of disciplinary cases.
21. In its decision letter for the 2018/19 PCF, the LSB asked the FO to aim to reduce the level of contribution. This year the contribution has been reduced from £40 to £20. The FO states that this has been made possible because it pursued and recovered its costs in a large disciplinary case.
22. The LSB asked the FO to explain why it needs to collect any contribution given the current level of the fund. The FO explained that there are currently six cases under investigation which may result in hearings and calls on the contingency fund in the coming year. The FO has explained that the costs of hearings are hard to predict, although the Notaries (conduct and discipline) Fees and Costs Order 2015<sup>4</sup> does assist in making costs more manageable.
23. The FO explained during the course of the application that if the calls on the fund arising from current cases are sufficiently small it may consider a further reduction of the required contribution in subsequent years.

#### Consultation on PCF

##### *Summary*

24. In March 2018, the FO published a wide-ranging consultation on its approach to regulation and risk which included relevant questions on practice fees and alternative charging models. Three alternative models were presented in the consultation - a fee based on turnover, a fee based on the number of fee earners and a fee based on the number of notarial acts. The application states that the turnover model was favoured by respondents, although no indicative cost figures were presented in this consultation. The consultation closed in June 2018, and received over 130 responses. Comments were also received from the two representative bodies.
25. In May 2019, the FO published a further consultation on its proposals for the PCF for 2019/20 based on a turnover formula. The consultation ran for six weeks and closed

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<sup>4</sup> <http://www.facultyoffice.org.uk/wp-content/uploads/2015/11/NotariesConduct-DisciplineFees-CostsOrder2015.pdf>

on 1 July 2019. There were only 23 responses to this consultation (and one of the two representative bodies) from the wider profession.

26. The response rate to the second consultation is relatively low given the overall size of the notarial market (and given the extent of the proposed changes the LSB would expect greater engagement). However, the LSB acknowledges the FO's attempts to raise awareness of the consultations by alerting all notaries by email to the publication of both consultations.
27. During the assessment of the application, the LSB asked the FO if there were any reasons to account for the low response rates. In its response, the FO highlighted that profession-wide consultation has only taken place for the last three years in its current format. Previously, consultations were undertaken through the two Notarial Societies who themselves sought views from their members and Councils.
28. The FO also reported that a move to a variable PCF was also subject to discussions within the Master's Advisory Board and with the Councils of the Societies and was, therefore, widely known throughout the profession and was supported.
29. For next year, we encourage the FO to consider other possible avenues for engaging notaries and obtaining their feedback on fee proposals.

#### *Consultation responses and consideration of responses*

30. The application states that respondents to the consultations were in general, in support of a move to a turnover based formula, even though some will face an increase in their own fees.
31. The application and FO consultation response, set out specific comments and how the FO has considered these:
  - some notaries (including the Society of Scrivener Notaries) thought a flat fee for all notaries with a turnover "top up" would be an easier approach. The FO note that this is likely to be the approach once entity regulation is introduced
  - the banding was considered too "coarse". The FO will keep the bandings under review and may introduce further bands to narrow the wider bands in due course
  - some notaries (also solicitors) commented that as notarial fees are included in their solicitors' practice fees, they would, in effect, be paying twice. The FO explain that the Solicitors Regulation Authority (SRA) specifically directs solicitors to include their notarial fees. The basis of the calculation may be the same (or similar), but they are separate qualifications
  - one notary (also a solicitor) thought there would be difficulties in splitting out "notarial turnover". The FO has offered to assist
  - one notary was concerned that unbilled work should not distort the figures. The FO confirm that work in progress is to be excluded for the purposes of the calculation.
32. For future PCF applications, the LSB expects the FO to consider a more detailed explanation of how consultation responses were considered and whether the

feedback resulted in changes and if not, the reasons for their decision. Even if there are a low number of respondents we would expect the FO to demonstrate that they have given proper consideration to issues and themes raised through consultation.

33. The LSB expect the FO to produce a review of its bandings within 3 years of them coming into operation. This will ensure the FO keeps track of any impact from the bandings and makes appropriate adjustments once it has had time to see the bandings in operation. We will follow up, through our regulatory performance function, to ensure that progress is being made to develop appropriate mechanisms for assessing the impact.

### Permitted purposes

#### *Allocation to permitted purposes*

34. The application explains that all PCF income is used to undertake permitted purposes covered within the scope of section 51(4)(a) of the Act.
35. The application further explains that the FO undertakes a range of permitted purpose activities. They are all activities that have been identified as having as their dominant purpose as one of the permitted purposes set out in section 51 of the Act.
36. During the assessment of the application, the LSB asked the FO to provide estimates of the total allocation of PCF to permitted purposes. The FO response noted that the FO has a small team all of whom are, from time to time, involved in work falling under section 51 of the Act. The FO provided best guess estimates on this. In terms of the LSB/OLC levy under s.51(4)(b), in 2019 the levy amounted to 6.4% of the PCF Income. The balance of 93.6% would fall between s.51(4)(a) and (f) with the vast majority falling under (a). The FO note that this will vary from year to year.
37. In future PCF applications, the LSB expects the FO to provide estimates on the allocation of PCF to each of the relevant permitted purposes.

#### *Other income allocated to permitted purposes*

38. PCF budgeted income for the financial year end 31 March 2020 accounts for 88% of the total budgeted income. The remaining balance is expected to come from appointments, exam fees, notarial qualification information packs and certificates of exemption.

#### *LSB targeted review*

39. In our 2019/20 Business Plan<sup>5</sup> we set out an intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.

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<sup>5</sup> [https://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/2019/Final\\_business\\_plan\\_2019-20.pdf](https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf)

40. The targeted review is due to begin in late 2019. We look forward to working with the FO to enhance our understanding of its current approach particularly in respect of activities it considers fall under s.51(4) (f) of the Act.

#### Transparency of PCF information to fee paying members

##### *Clarity of information provided*

41. The FO intend to publish the revised bands and PCF levels as an independent table. This will also be included in the request for certificate renewal and practice fee payment.

#### Regulatory and Equality Impact assessment

42. The application states that the FO does not consider it proportionate or necessary to produce a full regulatory and/or equality impact assessment. The LSB acknowledges that there is no formal requirement to carry out a regulatory and/or equality impact assessment, however given the change in methodology, and the significant increases for those notaries in the higher income bands, we asked the FO to provide further explanation of the likely impacts of such change.
43. The FO response states that although the proposed increase in the PCF for those in the upper turnover brackets is substantial, as a percentage of turnover (even around the thresholds) they represent a smaller sum than for the majority of notaries in the lower bracket for whom a reduction is proposed. The vast majority of those in the upper two brackets have turnover well above the thresholds and, thus, a relatively smaller percentage of turnover. In terms of impact, the proposed reduction for those in the lowest bracket (who in the main practice in areas where notarial provision is spread thinnest and/or are starting out in practice or maintaining their practice in retirement) will provide an incentive to continue to provide the service whilst those who can afford a higher fee will not be unduly impacted.
44. The LSB expect the FO to produce a review of its bandings within 3 years of them coming into operation. This will ensure the FO keeps track of any impact from the bandings and makes appropriate adjustments once it has had time to see the bandings in operation.

#### **Decision**

45. The LSB has approved the PCF application submitted by the FO for 2019/20 under section 51 of the Act.

#### **Summary of expectations for next application**

- FO to provide information on the progress of the FO to become self-funding and to build and maintain reserves equal to a full year's operational cost. We also expect the FO to develop a documented reserves policy and for future PCF applications to include this alongside information on the progress the FO has made in relation to achieving this goal (Paragraph 17)
- FO to reduce the contribution required for the contingency fund if calls on the fund are sufficiently low in the next year (Paragraph 23)

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- FO to consider a more detailed explanation of how consultation responses were considered and whether the feedback resulted in changes and if not, the reasons for their decision (Paragraph 31)
- FO to provide information on how the new methodological approach to the PCF is progressing through a review of its bandings. This will ensure the FO keeps track of any impact from the bandings and makes appropriate adjustments once it has had time to see the bandings in operation. We will follow up, through our regulatory performance function, to ensure that progress is being made to develop appropriate mechanisms for assessing the impact (Paragraph 32)
- To provide estimates on the allocation of PCF to each of the relevant permitted purposes (Paragraph 36).

**Matthew Hill, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board**

**10 September 2019**