LEGAL SERVICES BOARD

Meeting: Legal Services Board

Date: 7 June 2022

Item: Paper (22) 32

Title: Evaluation of Practising Fee Rules and Guidance

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Status: Official

Introduction: Purpose of the paper/ Issue

1. To present the findings and proposed next steps stemming from the evaluation of the first year of the implementation of the new Practising Fee Rules and Guidance.

Recommendation(s)

2. The Board is invited to **note and discuss** the findings of the evaluation exercise and proposed next steps

Background

3. As the Board is aware, new Practising Fee Rules and associated Guidance were implemented following Board approval on 19 January 2021 (prior to the 2021 Practising Fee cycle).

4. Prior to the new Rules and Guidance, the process for assessing Practising Fee applications was largely unchanged since first introduced in 2011. Our experience was the application and approval process could be made clearer for Approved Regulators (ARs), and Regulatory Bodies (RBs). One of the key aims of the new rules and accompanying guidance was to increase transparency and accountability in terms of ARs/RBs being able to clearly demonstrate their programmes of activity for the coming year and how these would be funded by the PCF.

5. The changes to the rules were aimed at four key outcomes:

    - **Outcome 1**: To increase transparency around approved regulators' and regulatory bodies' programmes of activity and how these will be funded, allowing those that pay the practising fee to drive accountability for its expenditure.

- **Outcome 2**: To support more meaningful discussion and debate across the sector on the purpose, benefits, costs, and value of regulation, which ought to result in improved standards and promote the regulatory objectives.

- **Outcome 3**: To allow approved regulators, and their regulatory bodies if they have one, to demonstrate that they have sufficient funds and financial resilience to regulate and operate efficiently and cost effectively

- **Outcome 4**: To inform the LSB's wider oversight responsibilities.

6. An evaluation plan was completed shortly after the Rules and Guidance were published to measure their success against the desired outcomes. The first evaluation plan was to take place at the end of the 2021 cycle, which concluded in January 2022.

Evaluation

7. The Statutory Decisions Team conducted an evaluation for each application submitted in 2021 and where relevant contrasted this with data from the application process in 2020, before the new Rules were implemented.

8. A summary report setting out the findings of the evaluation exercise can be found at **Annex A** to this paper.

9. The evaluation exercise has provided us with confidence that to date the new Rules and Guidance introduced in 2021 have had a positive impact in progressing the outcomes the LSB set out to achieve.

10. Applications provided greater transparency around programmes of activity and funding. This serves to improve accountability of funding to the regulated community.

11. We also saw a step change in active engagement with the regulated communities of the ARs/RBs. Some applicants didn't just hold formal consultations. They also hosted webinars, roundtables and sent out newsletters and questionnaires.

12. Further, all ARs/RBs conducted an equality impact assessment. In 2020 only one applicant conducted such an assessment, evidence of meaningful consideration of equality impact was significantly lacking. Some applicants included draft equality impact assessments with their consultations and invited comments. We also saw some applicants considering what mitigations were in place to address any identified differential impact.

13. While we can observe that all AR/RBs have demonstrated how their programme of activities which are regulatory functions relate to the regulatory objectives, it is too early to demonstrate the extent of the impact of these, but this is something which future regulatory performance reviews should capture, as ARs/RBs will be required to provide an annual assessment of the benefits of their programme of activities in future cycles.

14. The evaluation also provided us with evidence of the financial resilience of the AR/RBs, with just one providing limited assurance in this area. We would expect all ARs/RBs to demonstrate strong evidence of financial resilience in the next cycle.

15. The Rules have also served to inform the LSB's wider oversight responsibilities and promote a more joined up approach to regulation, as all but one of the ARs/RBs demonstrated link between their planned activities and achieving any currently 'not met' regulatory performance outcomes (where relevant). Although this is an improvement from previous applications, in future we will expect all applications to clearly demonstrate this.

16. The new Rules and Guidance provide for decisions on applications to typically be issued in a period of 35 calendar days. This period should only be extended in exceptional circumstances. The mean number of days taken to issue a decision in the 2021 cycle was 32 days. This represented an increase from 30 days in 2020 but a decrease from 33 days in 2019.

17. It is also notable that this year included one application that took a total of 60 days to issue a decision. This was the first ever decision to refuse a Practising Fee Application. The refusal[1] was facilitated by the new Rules being in place as they explicitly provide for refusal in circumstances where the Rules are not complied with as was the case with this application.

18. Overall, the evaluation indicates that the rules and guidance have had a positive impact across all four desired outcomes. To our knowledge the exercise has not identified any significant unforeseen risks or costs. We therefore consider that we are in a strong position to carry out assessments of Practising Fee applications in future years.

Next Steps

19. The LSB through its Relationship Managers will provide bespoke feedback to the ARs/RBs before the 2022 cycle on any issue that arose in the 2021 approval process which does not necessarily fall within the Rules, such as increased transparency in accounts.

20. We recommend proceeding with a programme of evaluative research relating to the applications process to include an evaluation of the impact of the 2021 Rules and Guidance every 2 years post-implementation to identify longer term impacts. The evaluation will be overseen by the Statutory Decisions Lead.

21. We are also planning a similar process to evaluate the newly implemented Rules and Guidance for alterations to regulatory arrangements.

[1] An application from the CLC for a significant change to its methodology for apportioning the Office of Legal Complaints levy component of the PCF across its regulated community. In the circumstances we considered that the CLC had not complied with the Rules that require CLC to act compatibly with the regulatory objectives and consult and engage effectively.

Risks and mitigations	
Financial:	Evaluation exercise completed within existing resourcing and budget
Legal:	This is an evaluation report and legal risk is therefore minimal.
Communications and engagement:	We will publish the summary evaluation report and share bespoke feedback with the ARs/RBs
Equality and diversity:	All regulators are required to complete EDI assessment as part of their application and with 5 of the 8 producing strong evidence of this. We would expect this trend to increase.
Resource:	Evaluation exercise completed within existing resourcing and budget

Annexes

Annex A – Summary evaluation report

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
N/A	N/A	N/A