23 February 2022

Approval of 2022/23 Practising Certificate Fee (PCF) application made by the Bar Council (BC) 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 BC 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 and the Practising Fee Rules 2021 ((Rules)[1].

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 BC is an approved regulator, and the Bar Standards Board (BSB) is the regulatory body to which the BC has delegated its regulatory functions.

4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. The Rules specify the permitted purposes that the practising fee may be applied to, the criteria and material the LSB will consider before deciding to grant an approved regulator's application in whole or part, the information approved regulators are required to submit and the application process and procedure. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)[2] which gives guidance on each of the Rules.

5. This notice sets out the decision taken, including an assessment of the PCF application.

Summary and overview of PCF application and decision

6. The application is for an increase to the PCF of 4.5%, mainly to fund an increased budget for the BSB. This increase was opposed by the BC and the majority of respondents to the consultation on a number of grounds, including the view held that the BSB had not set out a costed and detailed programme of activities to justify the increased PCF.

[1] https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf
[2] https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf

7. The BC submitted a first version of this application to the LSB on 24 January 2022 on behalf of BC and the BSB. This application was accompanied by a letter from the BC raising a number of concerns including the lack of a costed and detailed programme of work from the BSB to be funded by the PCF. The LSB considered the concerns raised by the BC, which largely reflected points raised by respondents to the public consultation, in our review of this application.

8. Our review of the application submitted on 24 January showed that it was lacking sufficient information in some areas, in particular in relation to the transparency of the BSB's proposals, its proposed activity for the year, the allocation of PCF income to the proposed activities and how the benefits of the BSB's proposed activities had and would be assessed. There was also insufficient information about how the BC managed its reserves and the BSB's access to them, and how the BC and the BSB had taken account of the consultation feedback.

9. Following our review, we asked for further information from the BC and BSB on the areas identified above, to allow us to progress our assessment of this application. On 9 February, we received a revised version of this application which included additional information which sought to address the points the LSB had raised. This revised application allowed us to progress our assessment. We have assessed the revised application in this decision notice, noting the omissions made in the first version of the application received, to signpost to the BC and BSB our expectations for next year.

The BSB's regulatory performance commitments and resources

10. Rule 14 and its associated Guidance sets out an expectation that regulatory bodies provide accountability in their PCF applications on their work in relation to areas of concern raised by the LSB. In particular, paragraph 42 of the Guidance explains that we may take into account whether any commitments that regulators have made in relation to unmet regulatory performance outcomes are reflected in regulators' activities for the year ahead. This is important because the performance framework sets out the minimum standards we expect of a well performing regulator; being able to demonstrate how the PCF and associated programme of activity will enable a regulatory body to meet these minimum standards is an important part of demonstrating that the proposal is sufficient to allow the body to discharge its regulatory functions effectively.

11. The BSB was assessed as not meeting six outcomes (RA2, WL 1,2,3,5, and 6) under the LSB's Regulatory Performance Framework in November 2021 ("November assessment"). This followed the findings of the LSB's review of the BSB under the "Well-led" standard of the Regulatory Performance Assessment Framework ("Well-led review")[3] in July 2021 . Under this standard, we expect all regulators to demonstrate the leadership, capability and capacity, and appropriate corporate governance to manage their organisation effectively; and to have a culture that encourages and uses learning to improve performance and promotes a transparent and consumer-focused environment. The BSB committed to an Action plan in July 2021 to address the findings of the Well-led review.

12. In our November assessment, we also noted that the BSB has faced a series of adverse events and challenges during 2021 and, taken together, it was hard to avoid the conclusion that lack of access to sufficient capability, capacity and resources had been a significant contributing factor. We reflected this in our assessment of the BSB's

[3] The report was published in July 2021.

performance against outcome WL2[4], which we downgraded from met to *not met - action being taken*. We noted that to meet this outcome, the BSB must demonstrate that it has strengthened its capacity and capability to carry out its regulatory functions effectively and efficiently including meeting its Key Performance Indicators for its core regulatory work.

13. The Rules and Guidance also set out that the PCF should be adequate to effectively discharge the approved regulator's regulatory functions in an efficient and cost-effective manner[5].

14. Moreover, the Rules and Guidance make clear that the approved regulator must set the fee in the way which it considers most appropriate to meet the regulatory objectives and that we would expect the approved regulator to explain how the programme of activity in respect of its regulatory functions, will support the regulatory objectives.

15. The application submitted on 09 February 2022 by BC on behalf of the BC and the BSB provides that the PCF/income bands which determine the level of PCF will increase by 4.5% overall, as set out in the table below.

Table 1: Income Bands and fees for 2022/23

Income Band	Range	Current Fee	Proposed Fees
Band 1	£0 - £30,000	100	100
Band 2	£30,001 - £60,000	246	253
Band 3	£60,001 - £90,000	494	509
Band 4	£90,001 - £150,000	899	926
Band 5	£150,001 - £240,000	1,365	1,406
Band 6/1	£240,001 - £350,000	1,850	1,906
Band 6/2	£350,001 - £500,000	1,850	2,017
Band 7/1	£500,001 - £750,000	2,500	2,575
Band 7/2	£750,001 - £1,000,000	2,500	2,725
Band 8/1	£1,000,001 - £1,500,000	3,000	3,090
Band 8/2	£1,500,001 and over	3,000	3,270

16. Paragraph 9 of the application explains how the increase will be spread across the profession, with no change to earnings Band 1, an increase of 3% for Bands 2 to 5. Bands 6, 7 and 8 will be split with a 3% increase to the lower half of each of these bands and an increase of 9% to the top half of those bands. Paragraph 11 notes that the BC projected total PCF income for 2022/3 is £16.84m (an increase from £15.3m in 2021/22).

17. Based on the revised application, we were satisfied overall that the proposal met the criteria in the Rules and therefore should be approved. In reaching this decision, we considered the fact that in our November assessment we concluded that the BSB was lacking the capacity and capability to meet the performance standards of an effective regulator. The revised application set out why the additional income was required to address its performance issues and how the PCF funds would be deployed to

[4] The regulator understands the resources (financial, human, and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision, and enforcement) effectively and efficiently and these are implemented.

[5] Paragraph 44 of the Guidance explains that the approved regulator's efficiency in relation to how the allocated fees have been calculated

improve performance (see paragraphs 41 - 43 below). We consider that the information supplied by the BSB meets our expectations as set out in paragraph 44 of the Guidance that the PCF should be adequate to effectively discharge the approved regulator's regulatory functions in an efficient and cost-effective manner[6]. We are further satisfied that the proposed increase in the funding available to the BSB, and the uses to which it proposes to put that funding, reflects the considerable challenges it faces in terms of capacity and capability. We note, however, that the additional posts are just one component of a wider programme of organisational change and development designed to meet those challenges.

18. We recognise that while the application complies with the relevant Rules (and is accordingly approved by the LSB), from the evidence presented by the Bar Council in its summary of consultation responses it is clear that the increase does not enjoy widespread support among feepayers. It will be incumbent, therefore, on the BSB to demonstrate that the additional resources are used to good effect, and on the Bar Council to support the BSB's efforts to deliver positive change.

19. The revised application sets out evidence that the BC and the BSB have carefully and properly planned heir financial position for the forthcoming year. We note that reserves will be used to mitigate the increase in the PCF and that the BC has provided information to show how it will maintain appropriate reserves in the future.

20. We are satisfied that the BSB explained how its expenditure of the PCF will be targeted toward meeting the regulatory objectives. We are also satisfied that the BC's and BSB's activities for 2022/23 which will be funded by the PCF fall within the permitted purposes, in compliance with section 51(2) of the Act.

21. The BC has increased the accountability for its activities and the allocation of its resources by adopting an engagement strategy which has allowed it to consult with its regulated community and members more meaningfully. It is of concern that the information provided in the consultation and in the first version of the PCF application to the LSB was lacking the additional justification, explanation and information about the need for a PCF increase that was included in the revised application. It is clear that respondents to the consultation were concerned by this. To support meaningful engagement and accountability, for future years we will expect the BSB to reflect on the experience this year and provide further information at consultation stage.

22. The proposal also considers the estimated impact on those with protected characteristics under the Equality Act and the impact of Covid-19 on authorised persons income for 2022/23. Following the BC's equality impact analysis, the PCF for band one, which has the highest proportion of barristers with protected characteristics, will remain unchanged.

23. The LSB's decision is to approve in full the levels of the PCF for 2022/3 to be charged to individuals as set out in the application by the BC.

LSB assessment

<u>Allocation of practising fee to permitted purposes</u>

[6] As set out in footnote two on paragraph 44 of the Guidance, the LSB will consider this at a high level.

24. The application states at paragraphs 31-33 that the BSB budget was prepared independently by the BSB and approved by the BSB Board before inclusion within the overall budget of the BC. We are therefore satisfied from the information provided in the application that the regulatory body has independently led the development of its part of the budget and application.

25. Of the total amount of PCF to be collected of £16.84m, table 2 sets out that £10.33m (61%) will be allocated to the regulatory body and £4.31m (25%) will be retained by the approved regulator, while the remaining £2.19m (12.7%) will be used to fund the work of the Legal Ombudsman, Legal Services Board and the legacy pension scheme. Table 16 sets out that this PCF will be raised from an estimated 16,914 barristers, each paying an average PCF fee of £996.06.

BSB

26. Paragraph 47 of the application sets out that the BSB proposes the following strategic priorities for 2022-2026:
    - Providing consumers with confidence in using the services of barristers
    - Maintaining and improving access to justice
    - Enabling the benefits and mitigating the risks of innovation and technology
    - Promoting best practice in chambers' oversight of standards and diversity

27. Paragraph 2 of the application sets out that the whole of the BSB's work is classed as permitted purposes. The programme of activity on page 12 of the application shows how the BSB's activities fall under the permitted purposes set out in section 51(4)(a) of the Act, which is the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons.

28. Paragraph 49 of the application explains that the majority of the BSB's expenditure will fund strategic priority number one above and meeting its key performance indicators ("KPIs") for its core regulatory operational work, which the BSB is currently not meeting. Annex 3 provides an explanation of how the BSB's planned work, broken down by regulatory function and regulatory activities, support the regulatory objectives and BSB's strategic priorities and shows how the BSB has allocated its portion (£10.33m) of total PCF income to these activities as follows:

    - Authorisations (£1,887,204; 23%)
    - Enforcement (£1,419,195; 17%)
    - Governance and corporate services (£960,662; 11%)
    - Policy and Research (£794,897; 10%)
    - Supervision ((£727,213; 9%)
    - Contact and Assessment (£658,243; 8%)
    - Legal Support (£407,880; 5%)
    - Equality and Access to Justice (£316,159; 4%)
    - People (£288,545; 4%)
    - Communication and public engagement (£262,416; 3%)
    - Programmes (£280,735; 3%)
    - Public Legal Education PLE (£111,849; 2%)
    - Regulatory Risk (£118,494; 1%)

29. The regulatory performance section in Annex 3 (page 54) of the application explains how the functions listed in the BSB's programme of activity contribute to meet the BSB's Well-led Action plan which it agreed with the LSB to address the findings of

the review of the BSB under the “Well-led” standard of the Regulatory Performance Assessment Framework (“Well-led review)[7].

30. In paragraphs 49 to 50 of the application, the application also provides an explanation of how BSB’s planned expenditure and work to improve efficiency will improve its performance in meeting its KPIs for its core regulatory work. Paragraphs 51 to 53, sets out the other project work the BSB will undertake to promote the regulatory objectives, and which reflects its strategic priorities.

31. The last 3 paragraphs on page 55 of Annex 3 explain how the BSB has assessed the benefits of the activities funded by the PCF at the point that the programme of activity was determined and how it will assess the actual benefits after the activity has been completed.

32. We are satisfied that the BSB has complied with the two guiding principles in setting the PCF for its regulatory functions, that is, that the PCF must be allocated solely for permitted purposes set out in section 51 of the Act and the Rules, and that it will discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.

33. We are also satisfied that the application has set out how the BSB has measured the benefits of these activities at the point at which the activities were determined and how the BSB will assess the actual benefits after the activities have been completed.

34. Moreover, we are reassured that the BSB has taken into account its commitments to address its unmet regulatory performance outcomes in particular to ensure it has the resources to carry out its regulatory functions effectively and efficiently and that these commitments are implemented.

35. It is of concern that information required under the Rules to assess how a costed programme of activity linked to the regulatory objectives and the BSB strategy was omitted from the first version of the application. Furthermore, information about how the benefits of this programme would be measured and how the BSB would deliver its regulatory performance commitments was omitted from the first version of the application. The absence of this information in the first application meant that we could not progress our assessment. It is important that for future years, the BC includes this information about the BSB in its applications, as well as providing greater transparency on these areas in its public consultations and engagement.

BC

36. Paragraph 3 of the application links to the BC’s strategic plan which sets out five strategic objectives for 2019 to 2024. These are:
    - Championing the Rule of Law and Access to Justice for all
    - Representing the Bar
    - Supporting Barristers
    - Promoting the Bar
    - Enabling Regulation

37. At paragraphs 41 to 46 and paragraphs 120-138, the BC provides details about its programme of activity which is funded by PCF income and carried out under permitted purposes. These paragraphs also show how each activity links to the strategic plan.

[7] The report was published in July 2021.

The BC will spend a total of £4.3m on permitted purposes. The table on page 12 and table 27 on page 38 of the application show how the PCF income allocated to the BC will be used for activities which fall under the permitted purposes. These tables show that some activities such as EU law falls fully under permitted activities 51(4)(c) and 51(4)(f). Other activities such as communications falls under 4 different permitted activities with 25% of communications activities outside of permitted purposes.

38. Based on the information provided, we are satisfied that the proposed application of the PCF is in compliance with section 51(2) of the Act.

Budget for 2021/22 and financial information

BSB

39. The application has provided the BSB's draft budget and the income and expenditure for the previous year in table 20 of the application. Paragraphs 69 to 72 of the application notes that the 2022/23 draft budget takes the following into consideration:
    - the proposed BSB Strategic Priorities 2022-2025
    - the costs of the services (finance, IT and facilities) which the BSB shares with BC
    - the need for additional resources, with an 18% increase in the BSB's operating costs.

40. The draft budget includes the expected outturn for 2021/22 as the actual position for the year will not be known until after the end of the financial year. Table 20 shows that it is expected that there will be a net surplus of £258K. Paragraph 76 of the application sets out that forecast operating costs for 2021/22 will be lower than budgeted due to a number of factors of which the most significant is a saving of £229K in the regulatory operations area. Furthermore, paragraph 75 of the application sets out that forecast PCF income in 2021/22 is expected to be higher than budgeted PCF by £17K and regulatory income exceeding budget by £84k.

41. Table 20 shows that the BSB's PCF income is expected to increase from a forecast £10.821m in 2021/22 to £11.896m in 2022/23. The BSB's largest proportion of income is derived from the PCF (85%), with 11% from fees and charges because of regulatory action and 4% from shared corporate income.

42. Paragraph 72 explains that the cost of the BSB is budgeted to increase by £1.244m from 2021/22 to 2022/23 and that the most significant part of this increase is for staff with a budgeted extra expenditure on this area of £1.103m. The consultation document[8] sets out in paragraph 11 that the BSB has already boosted staff numbers over the last year and plans a further increase of 14.4 staff members in 2022/23 and 5 staff members in 2023/24. There are also budget increases for the BSB's part of shared services expenses (£499K) and LSB levy (£34K). Table 20 in the application shows that the BSB budgeted total cost of £14.467m for 2022/23 is £1.777m higher than the 2021/22 budget. The budget forecast for 2022/23 shows a loss of £471K which will be covered by reserves.

43. Annex 4, which was included in the revised application but not in the first version of the application, provides a breakdown of the BSB's expenditure by function, an explanation of the work it will undertake (and how it is linked to the BSB's strategic priorities and the regulatory objectives) and how many additional posts (and types of

[8] Please see paragraph 11 of 2022/23 Budget and Practising Certificate Fees (PCF) Proposal November 2021 - Consultation for more details.

post, such as fixed term) it will create for each function. The table in Annex 5, which was also not present in the first version of the application, elaborates on these additional posts by explaining the purpose of each per function. We note that a significant number of the additional posts will be in teams which conduct the BSB's core regulatory functions (e.g. supervision, authorisation, assessing reports about barristers) which have been falling short of KPIs.

44. Based on the information included in the revised application, we consider that the BSB has been transparent in its budget about its expenditure, how PCF funds will be allocated and has explained how and why the additional resources will be deployed. It is a concern that adequate budget information was missing from the first version of the application and its consultation. We expect adequate budget information to be included in next year's application.

BC

45. The BC has provided its draft budget and the income and expenditure for the previous year in table 22 of the application. Paragraph 83 of the application notes that the 2022/23 draft budget aligns with the BC strategic plan[9] 2019-2024.

46. Table 22 shows the BC's budgeted position for 2021/22 compared to the expected outturn for the year (as the actual position will not be known until the end of the year). This shows an expected surplus of £125K for 2021/22.

47. Table 22 shows that BC's share of PCF income will be £4.951m for 2022/23. This is an increase of £437K compared to the 2021/22 budget. Paragraph 94 and tables 24 and 25 show budgeted figures for 2022/23 for the expenditure of BC on permitted purposes, split by directorate/activity, and the sources of income that fund it. The expected total PCF for 2022/23 will not cover the £5.231m most of the BC's permitted purposes activities which include its share of the LSB levy and the shared services expenses. Table 25 shows that the BC has other income of £681K, which results in a surplus of £401K on permitted purposes.

48. Table 17 shows that the BC had a net surplus of £4.706m for the year 2020/21. This equates to 22% of its overall budget. Paragraphs 12-14 of the application explain that this surplus resulted from the BC implementing cost cutting measures such as salary cuts and furloughing of staff because it expected a drop in PCF income due to the pandemic. However, as set out in paragraph 14, PCF collection for 2021/22 did not match the budgeted for worst case scenario.

49. Table 4 provides a budget overview for the entire BC. It shows that the BC, the Resources Group which provides shared services and the BSB all have significant cost increases for staff. This averages a 16% increase across the three units of the BC. There is a 10% increase in non-staff cost across the BC and a 6% increase in the LSB levy. Overall, this leads to a 12% increase in costs when comparing the 2021/22 budget to the 2022/23 budget. Paragraph 19 explains that because it obtained a Coronavirus Business Interruption Loan Scheme loan and cut costs in 2021/22 the BC is able to fund some of these recurrent increased costs out of reserves.

50. Table 17 shows the forecast budget for the BC. This shows that PCF is expected to increase every year until 2025/26. Paragraph 54 explains that the PCF increase includes a minimum uplift of 3% annually to maintain a healthy financial position and

[9] Bar-Council-Strategic-Plan-2019-24.pdf (barcouncil.org.uk)

mitigate the inflationary effects on recurrent costs. Paragraph 57 explains that the BC will generate surpluses while the BSB budget will remain in deficit until 2028/2029.

51. We are satisfied that the application provides transparency to the regulated community about the allocation of the BC's resources (including PCF income) and enables the LSB to be confident that the BC has carefully and properly planned its financial position for the forthcoming year.

Reserves and financial resilience

52. Paragraph 16 of the application sets out that the BC will limit the increase of the PCF to 4.5% by drawing on reserves. Paragraph 57 shows that the BSB will be running at a deficit until 2028/29 with the difference being supplemented by reserves until it achieves a balanced budget. Table 6 sets out that the BSB will receive £486K from the permitted purposes reserve in 2022/23. However, as explained in paragraph 18, as the increased expenses are recurring the BC cannot rely exclusively on reserves as that would lead to a much bigger PCF increase in the future once the reserves were depleted.

53. Table 18 provides an overview of the different types of reserves held by the BC. Table 19 provides a forecast for the different types of reserves held by the BC. The application notes in paragraphs 66 and 67 that from 2022/23 both the free cash reserves and the permitted purposes reserves will be within the target range.

54. Paragraph 60 explains that as the BC is the legal entity it is impractical for the BSB to hold separate reserves. Paragraph 60 of the application shows that reserves generated from PCF income is held separately from other reserves. In response to a question from the LSB, the revised application sets out in paragraph 61 of the application that the BSB has unfettered access to the permitted purposes reserves and explains its means for accessing this reserve.

55. Paragraph 59 sets out how the BC manages the risks connected to each distinct type of reserve and the rationale for setting the target level of each reserve.

56. We are satisfied that the application provides transparency to the regulated community about the reserves and financial resilience of the BC.

Consultation and engagement

57. The BC and BSB issued a joint consultation which was open between 30 November 2021 and 14 January 2022. Paragraphs 96 to 103 of the application set out the BC's engagement with its community on its budget, high level programme of activity, and the proposed PCF prior to making an application. The BC took a multi-channel approach to engagement using traditional media and social media such as twitter and e-newsletters and direct engagement with a wide range of stakeholders listed under paragraph 103.

58. Paragraph 104 of the application sets out that in addition to the feedback received from direct engagement during the consultation the BC received 107 responses to the consultation.

59. We note that the consultation on the PCF contained introductory comments from the BC about BSB's proposed increase in expenditure which are likely to have had a bearing on the response. Even accounting for that, however, we can see that the

consultation may not have made the most of the opportunity to set out the BSB's programme of activity, associated benefits and how expenditure will be allocated to each activity. These elements were also missing from the first version of the PCF application to the LSB (although provided to a satisfactory degree during our assessment). We note that the application sets out that the majority of the responses to the PCF proposals were negative, which may have been influenced by the introductory remarks made by the BC and the significant increase proposed for the PCF, without adequate detail about the BSB activities that the PCF income would fund and its benefits.

60. In the 2021 PCF decision notice[10] (for PCF year 2021/22) the LSB encouraged '*the BC and BSB to consider how it might encourage more meaningful engagement, on the levels of PCF, for example by combining this with a consultation on their proposed programmes of activity to provide more context*'. We note that last year the PCF consultation lasted 5 weeks and generated 13 responses. This year the consultation lasted 6.5 weeks and generated 107 responses. We also note that this year's consultation document includes contextual information from the BSB about why it requires additional resources to deliver effective regulation. In order to be more transparent, we encourage the BC and BSB to include a programme of activity and how it will allocate PCF funds to those activities to inform more meaningful engagement on the levels of PCF in next year's PCF consultation.

61. Paragraphs 108-110 of the application provides a summary setting out how the BC (and BSB) took into account the consultation feedback when setting the PCF level. We note that this information was missing from the first version of the application. We expect a consideration of consultation feedback to be included in next year's PCF application.

62. The LSB notes that in some respects the BC has increased accountability for its activities by the steps it has taken to engage its regulated community. However, in future we would expect the consultations to include a programme of activity to promote transparency and support a meaningful and informed discussion regarding the costs, benefits and value of regulation. We note that the application provides transparency on the consultation responses received.

63. It is also worth noting that in presenting the proposals for consultation, the Bar Council set out its view that the increase in costs for the BSB was unreasonable. This may have made it more difficult to secure any positive engagement by the profession with the proposals. While we recognise that the Bar Council acting as a representative body must be free to form a view on the funding of the BSB, we remind the BC that its exercise of its reg functions under the Act, of which setting the PCF is one, should not be prejudiced by its representative functions.

Impact assessments

Equality Impact assessment

64. A full Equality Impact Assessment (EIA) which considers the likely impact of the level of the PCF on the regulated community with protected characteristics has been provided by the BC in annex 1 of the application.

[10] BC PCF Decision – January 2021

65. To develop its EIA, the BC carried out an analysis of barristers with protected characteristics across the different income bands. This analysis showed that band 1, which contains people newly joining the profession and those returning from maternity / paternity, has the highest proportion of women, ethnic minorities, disabled and the highest proportion of those aged 25-34 years old. This band also has the lowest earnings. Paragraph 145 of the application explains that to mitigate the impact of the PCF increase the band 1 fee will remain unchanged.

66. Paragraphs 147 to 150 shows that BC reviewed the EIA in light of consultation feedback and found that based on the evidence the proposal shows no potential for discrimination. We note that this information was missing from the first version of the application. We expect a consideration of consultation feedback to be included in next year's EIA in the PCF application.

67. We consider that the revised application provides meaningful consideration of equality issues and demonstrates that this has informed the BC's approach, which is positive and is particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession.

Regulatory impact assessment

68. We note that the BC has structured the PCF increase in such a way that barristers with higher earnings have a bigger increase of their PCF fee. As shown in the table below paragraph 139 in the application, all barristers on the lowest pay (under £30k) have been protected from an increase. For barristers earning less than £350k (bands 2 - 6 (lower half of band 6) the increase in PCF will be 3% and only for the top half of bands 6,7 and 8 will a 9% increase apply.

69. Paragraph 17 of the application explains that to help barristers with the cost of the PCF a barrister can delegate payment to their chamber and stage it in two instalments 6 months apart.

70. We consider that BC and the BSB have given due consideration to the impact of the level of the PCF on the conduct of legal services by their regulated community in setting the PCF for 2022/23.

Decision

71. The LSB has approved the PCF application submitted by the BC for 2022/23 under section 51 of the Act.

Summary of expectations for next application

- BC to include a costed programme of activity for the BSB which shows how the BSB will spend PCF income and how the programme of activity links to the regulatory objectives, address BSB's regulatory commitments and links to BSB's strategy
- BC to provide information about how BSB has measured the benefits of these activities at the point at which the activities were determined and how it will assess the actual benefits after the activities have been completed
- BC to include an explanation of its consideration of consultation feedback.
- BC to include for the BC and the BSB a programme of activity and in respect of the BSB's regulatory activities an explanation of benefits in the PCF consultation

- BC to ensure that its exercise of its reg functions under the Act, of which setting the PCF is one, should not be prejudiced by its rep functions
- BC to include consideration of consultation feedback in EIA.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
23 February 2022