



The Law Society

**Legal Services Board consultation on changes to  
the Practising Fee Rules 2009**  
Law Society response  
8 April 2016



## Introduction

1. The Law Society of England and Wales ('the Society') is the professional body for the solicitors' profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and in the public interest undertakes work in areas such as the improvement of practice standards, pro bono work, law reform, promotion of human rights, and development of practice rights internationally. These activities are considered as being of such importance that they are recognised under statute. The Society is an approved regulator under the Legal Services Act 2007 (the Act).
2. The Society welcomes the opportunity to respond to the Legal Services Board (LSB) consultation on proposed changes to the Practising Fee Rules 2009 (the rules), made under section 51 of the Act.
3. We note that the need for clarity and transparency is a key driver behind the LSB's proposals. The Society agrees that there is a need for such clarity and transparency and recognises that this is particularly important in relation to those paying practising certificate fees. Prior to seeking annual LSB approval, and as required under the rules, the Society consults with those who pay the fees and to whom the Society is accountable, to ensure that they have an opportunity each year to comment on the fee level and the purposes for which the fees will be used.
4. Consultees are encouraged to respond to the consultation and consideration of responses forms an important part of the decision-making process on the proposed fee level. Thereafter, to ensure full accountability, we report back to them on the results of the consultation and the decision. This transparent process includes explaining how the practising certificate fees will be applied as between the Society's regulatory permitted purposes and non-regulatory permitted purposes.
5. In its consultation, the LSB asks for responses to the proposed introduction of additional criteria and evidence requirements for the purpose of approval of the level of practising certificate fees. It is noted that the questions framed in the consultation do not seek to invite comment on the purpose or substantive basis of the new rules and are limited to whether the additional criteria "*adequately explain the matters that the LSB will take into account when considering a PCF application*" and "*whether the LSB's proposed changes to the evidence requirements are clear*".
6. The Society's response to the (limited) questions framed in the consultation are informed by the lack of transparency and certainty in the current rules.

### **Question 1: Do the two proposed additional criteria in Rule 10 adequately explain the matters that the LSB will take into account when considering a PCF application?**

7. Given the duty imposed on the LSB in section 3(2) of the Act not to act in a way which is incompatible with the regulatory objectives, the proposed Rule 10a seems appropriate.
8. However, section 3(1) and (3) of the Act also requires the LSB when discharging its functions (including the function of annual approval of the level of practising fees under section 5.1(5)) to have regard to "*the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed*"

and to *"any other principle appearing to it to represent the best regulatory practice"*. For completeness, it would be appropriate to also add a reference to these requirements to the proposed Rule 10a.

9. For the purpose of adequate clarity, *"compatibility with the regulatory objectives"* is to be given its ordinary meaning, i.e. that the LSB's assessment of this factor will not extend to compatibility with non-regulatory objectives of an approved regulator (which the LSB is unable to do in view of the limitations in Section 29(1) of the Act).
10. Proposed Rule 10f introduces the factor of *"clarity and transparency on the allocation of all the Approved Regulator's financial resources, whether or not those resources arise from permitted purposes, and the impact on the proposed practising fee."*
11. As mentioned, the Society recognises these requirements towards those who pay practising fees and meets them through its annual practising fee consultation (evidence of which is already required under Rule 10g).
12. To the extent that the new rule is aimed at clarity and transparency of the allocation of approved regulators' financial resources in respect of **regulatory** activities, in view of the Society's proposal (see paragraph 8 above) that new Rule 10a should also incorporate compatibility with the principles under which regulatory activities should be transparent, proportionate and accountable under Section 3(3) of the Act, the Society considers that new Rule 10f is not required.
13. To the extent that new Rule 10(f) is designed to require information about financial resources arising from **non-regulatory** permitted purposes and/or arising from **non-permitted** activities, the LSB is asked to explain the basis on which such information may be taken into account for the purpose of approval of the practising fee level. The Society notes that the LSB's approval function must be consistent with the limitations in the statutory framework with reference to **regulatory** activities, in particular the scope of the LSB's duty in section 3(3) of the Act (and the parallel section 28 duty of approved regulators) and the limited scope of the LSB's function under section 51(5) of the Act to approve the practising fee level under **regulatory arrangements**. The Society questions whether, in the exercise of its approval function, the LSB may permissibly require the Society to provide details of financial resources arising from non-regulatory permitted purposes and/or arising from non-permitted activities and whether approval of the fee level may permissibly be refused based on "clarity and transparency" of such information.

**Question 2: Are the LSB's proposed changes to the evidence requirements clear?**

14. Proposed Rule 11c requires the proposed practising fees for the current application and, where there is a proposed increase in practising fees and where available, the estimates for the next three years. Proposed Rule 11b requires that, where there is a proposed increase in practising fees, the budget should show anticipated income from all sources and its allocation to the permitted purposes for the current application and, where available, the next three years.
15. As in the case of the criteria to be applied for determining practising fee levels, the Society similarly supports the principle of transparency of evidence requirements to support a fee application.

16. However, to the extent that the evidence required under proposed Rules 11b and 11c is intended to be relevant for the purpose of assessing the new transparency criteria proposed in new Rule 10f, the Society repeats the comments made in response to question 1 above. It is noted, in particular, that Rule 11b requires (where there is a proposed increase in practising fees) the budget to show anticipated income from **all** sources and its allocation to the permitted purposes. For the reasons stated above, the Society does not consider that evidence relating to future estimates of financial resources arising from non-regulatory permitted purposes or the future allocation of such resources to non-regulatory permitted purposes may legitimately be taken into account for the purpose of determining practising fee levels. Accordingly, the basis and scope of these proposed changes to the evidence requirements are unclear.

### **Impact assessment**

17. We note the absence of and need for an Equality Impact Assessment. Since the proposals will impact on a profession and a client base with varying demographics, we would urge the LSB to undertake and publish an Equality Impact Assessment.

### **Conclusion**

18. We invite the Board to contact the Society to discuss any of the submissions made in this response.