

## Draft

### Practising Fee Rules 2020

30 July 2020

The Legal Services Board has, on [...], made the following Rules under section 51 of the Legal Services Act 2007 (c.29).

The Practising Fee Rules 2016 are hereby revoked.

#### A. Definitions

1. The terms in these Rules have the following meanings:

**Act** – The Legal Services Act 2007.

**Applicable Persons** – Includes relevant authorised persons and any other person regulated by the approved regulator.

**Approved Regulator** – As defined in section 20(2) of the Act.

**Board** – the Legal Services Board.

**Committed Reserves** – The sum of reserves held by the approved regulator or regulatory body for ring-fenced commitments, such as pensions or capital funding.

**Consumer Panel** – The panel of persons established and maintained by the Board in accordance with section 8 of the Act.

**Equality Impact Assessment** – An assessment of the anticipated impact of the practising fee on persons with protected characteristics as defined by section 4 of the Equality Act 2010.

**Guidance** – The Guidance referred to in Rule 4, issued by the Board under section 162 of the Act in relation to these Rules, published at the same time as these Rules, and updated from time to time.

**Legal Services** – The services provided by a person which consist of or include “legal activities” as defined by section 12 of the Act.

**Permitted Purpose(s)** – The purposes for which an approved regulator may apply amounts raised by practising fees, as set out in Rule 8.

**Person** - Includes a body of persons (corporate or unincorporated).

**Practising Certificate** – A licence which confers authority on a relevant authorised person to conduct reserved legal activities or supervise such activities.

**Practising Fee(s)** – As defined by section 51(1) of the Act.

**Practising Fee Reserves** – As defined in Rule 19.

**Programme of Activity** – The activities which the approved regulator intends to carry out during the practising fee year, which will be funded in whole or in part by the practising fee.

**Regulatory Arrangements** – As defined by section 21 of the Act.

**Regulatory Body** – A body which has been delegated the regulatory functions of the approved regulator in accordance with the Internal Governance Rules 2019, made by the Board under section 30 of the Act.

**Regulatory Functions** – As defined by section 27(1) of the Act.

**Regulatory Impact Assessment** – An assessment of the anticipated impact of the practising fee on the regulatory objectives and relevant authorised persons.

**Regulatory Objectives** – As defined by section 1(1) of the Act.

**Relevant Authorised Person(s)** – As defined in section 51(8) of the Act.

**Representative Functions** – As defined by section 27(2) of the Act.

**Reserved Legal Services** – As defined by section 207(1) of the Act.

**Rules** – These Rules, made by the Board pursuant to section 51 of the Act.

**Uncommitted Reserves** – The sum of reserves held by the approved regulator or regulatory body which have not been allocated to any ring-fenced commitments.

## **B. Application and Guidance**

2. These Rules are made to comply with the Board’s duty under section 51 of the Act.
3. Before a practising fee can be levied, an approved regulator must:
  - a. submit an application to the Board for approval of the practising fee; and
  - b. comply with these Rules in making that application.
4. In seeking to comply with these Rules, an approved regulator must have regard to any Guidance issued by the Board under section 162 of the Act.

## **C. Legal Framework**

5. A practising fee is payable under the regulatory arrangements of an approved regulator only if the Board has approved the level of the fee.
6. The setting of the practising fee and the application to the Board for approval of that fee are regulatory functions and must be discharged in accordance with section 28 of the Act. The approved regulator must, so far as is reasonably practicable, act in a way:
  - a. which is compatible with the regulatory objectives; and
  - b. which the approved regulator considers most appropriate for meeting those objectives.
7. An approved regulator may only apply amounts raised by practising fee for one or more of the permitted purposes.
8. The permitted purposes are:
  - a. the regulation, accreditation, education and training of applicable persons and those wishing to become such persons, including:
    - i. the maintaining and raising of their professional standards; and
    - ii. the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
  - b. the payment of a levy imposed on the approved regulator under section 172 of the Act and/or the payment of a financial penalty imposed on the approved regulator under section 37 of the Act;
  - c. the participation by the approved regulator in law reform and the legislative process;

- d. the provision by applicable persons, and those wishing to become such persons, of legal services including reserved legal services, immigration advice or immigration services to the public free of charge;
- e. the promotion and protection by law of human rights and fundamental freedoms;
- f. the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions;
- g. increasing public understanding of the citizen's legal rights and duties; and
- h. preventing any person, who is not a relevant authorised person and/or does not hold a current relevant practising certificate, purporting to be such a person or to hold such a certificate.

#### **D. Procedure**

- 9. An application by an approved regulator for the Board to approve the practising fee must be made in writing:
  - a. in the form set out in Annex 1 to the Guidance; and
  - b. attaching such evidence as is specified in that form.
- 10. Where the Board has received an application under Rule 9, it will notify the approved regulator in writing of the estimated time period in which a decision will be provided.
- 11. The Board will notify the approved regulator of its decision in writing within the time period specified under Rule 10 unless:
  - a. the Board requires the approved regulator to re-submit the application in whole or in part; and/or
  - b. the Board is unable to provide a decision within this time period and notifies the approved regulator in writing.
- 12. In considering an application made in accordance with Rule 9, the Board may consult any person it considers appropriate. In particular, the Board may consult the Consumer Panel about the impact of the fees on persons providing non-commercial legal services.

#### **E. Overarching Criteria**

- 13. The application to the Board for approval of the practising fee should address the following criteria -
  - a. Transparency. It should be clear how the approved regulator proposes to apply the fee to a programme of activity and how the benefits of these activities will be assessed.

- b. Accountability. The approved regulator should engage effectively with relevant authorised persons when setting the practising fee, report on the application of the practising fee for the previous year and address any areas of concern raised by the Board.
- c. Proportionality. The practising fee should be adequate to effectively discharge the approved regulator's regulatory functions in an efficient and cost-effective manner.
- d. Consistency. The application of funds should follow a clear plan with identifiable priorities.
- e. Targeted where action is needed. The approved regulator should apply the practising fee in the way which it considers most appropriate to meet the regulatory objectives.

## **F. Allocation of Practising Fee to Permitted Purposes**

- 14. An approved regulator which discharges both regulatory and representative functions must state the amounts raised by the practising fee that will be:
  - a. allocated to the regulatory body; and
  - b. retained by the approved regulator.
- 15. An approved regulator must clearly set out:
  - a. the programme of activity to which the practising fee will be applied; and
  - b. which permitted purpose(s) each activity is for.
- 16. If an approved regulator intends to apply amounts raised by the practising fee to an activity for multiple purposes, one or more of which is not a permitted purpose, the approved regulator must explain:
  - a. the reason why the amount or activity could not be delineated to only be applied for permitted purpose(s); and
  - b. the basis on which the approved regulator is satisfied that this application of the practising fee will nonetheless comply with section 51(2) of the Act.

## **G. Financial Information**

- 17. An approved regulator must provide the following information:
  - a. financial information for the previous year, including a comparison of actual and budgeted income and expenditure; and
  - b. income and expenditure forecasts, including practising fee income, for three years from and including the year for which the practising fee is to be levied.
- 18. This information must be prepared on the basis of accruals rather than cash, if reasonably practicable.

## **H. Reserves**

19. An approved regulator must hold any reserves generated from surpluses of the practising fee (“practising fee reserves”) separately from any other funds.
20. If the approved regulator has a separate regulatory body, the regulatory body should manage its own practising fee reserves as far as reasonably practicable.
21. An approved regulator must set out:
  - a. A clear policy on how it sets the target for the level of its reserves and manages those reserves. In particular this should address:
    - i. the different types of reserves held, which must clearly distinguish practising fee reserves from other reserves;
    - ii. the target level for committed and uncommitted reserves;
    - iii. how the approved regulator will manage any accumulated reserves to date;
  - b. Any variance at the end of the previous year between the target level of reserves and accumulated reserves with an explanation of how this has been taken into account.
22. The approved regulator must satisfy the Board that the target level for practising fee reserves and the accumulated practising fee reserves are sufficient to ensure that the approved regulator is reasonably financially resilient even in adverse circumstances.
23. Rule 21 does not apply to any reserves which would not be made available for the discharge of regulatory functions.

## **I. Consultation and Engagement**

24. Before submitting an application to the Board to approve the practising fee, an approved regulator must consult relevant authorised persons about:
  - a. the programme of activity to which the practising fee will be applied;
  - b. the level of the practising fee and, in particular, any variation on the fee for the previous year; and
  - c. the distribution of the practising fee across the relevant authorised persons with an explanation of any changes to that distribution.
25. The approved regulator should engage effectively with as many relevant authorised persons as reasonably practicable on the matters set out in Rule 24.

## **J. Impact Assessments**

26. Before applying to the Board for approval of the practising fee, an approved regulator must conduct an initial:

- a. equality impact assessment; and
  - b. regulatory impact assessment.
27. If the initial equality impact assessment finds an adverse impact on persons with (any of the) protected characteristics, a full equality impact assessment must be carried out.
28. A full regulatory impact assessment must be carried out if one or more of the following conditions are met:
- a. the initial regulatory impact assessment finds that the practising fee may reasonably be considered likely to:
    - i. adversely affect a significant proportion of relevant authorised persons or
    - ii. be prejudicial to any of the regulatory objectives;
  - b. the practising fee involves a more than minimal change in the amount payable by any relevant authorised person(s) than was payable by the practising fee of the previous year; or
  - c. a significant and unforeseen event or circumstance has arisen during the previous year which has had a substantial impact upon the conduct of legal services by relevant authorised persons.
29. The equality impact assessments and regulatory impact assessments under Rules 26 to 28 must have regard to the factors set out in the Guidance.
30. An approved regulator must provide:
- a. a summary of the assessments carried out under Rules 26 to 28 and the findings of those assessments;
  - b. details of any action taken as a result of those findings or, if no action has been taken, an explanation of why this was not necessary or practicable; and
  - c. any other information about the assessments required by the Guidance

## **K. Decision by the Board**

31. When making an application under Rule 9 an approved regulator must satisfy the Board that:
- a. the approved regulator has complied with these Rules and had regard to the Guidance;
  - b. the approved regulator will only apply the amounts raised from the practising fee for one or more of the permitted purposes;
  - c. any increase in the fee, or any part of the fee, is reasonable and proportionate;
  - d. the fees to be allocated to regulatory functions are sufficient to effectively discharge those functions; and
  - e. the approved regulator has addressed any significant areas of concern raised by the Board in the previous year's application, or if it has not, provided a reasonable explanation as to why not.

32. If an approved regulator fails to satisfy the Board of any of the matters set out above, the Board may:
  - a. refuse to approve the entire practising fee;
  - b. refuse to approve any part of the practising fee; and/or
  - c. require the approved regulator to resubmit the application (in whole or in part) addressing the matters set out in Rule 31.
33. An approved regulator should set out in its application the arrangements it has in place to ensure that it will continue to operate effectively in the event that the Board does not approve the practising fee in whole or in part.