



LEGAL SERVICES
BOARD

Practising Fee Rules

The LSB's response to consultation and decision on new rules made under section 51 of the Legal Services Act 2007

29 January 2021

Contents

Executive summary.....	1
What we did.....	1
Changes we have made	2
Introduction	3
<i>About the Legal Services Board</i>	3
The practising fee	4
Reviewing our framework	4
The outcomes we are seeking.....	4
Analysis of consultation responses by key themes	5
Summary of key themes	5
Summary of consultation responses on specific draft Rules and LSB response	10
Equality impact assessment.....	23
Regulatory impact assessment.....	23
Next steps.....	24
Annex A: Practising Fee Rules 2021 and Guidance	25

Executive summary

1. The Legal Services Board (“LSB”) is the oversight regulator for legal services. It is responsible for regulating the approved regulators of legal services. The LSB was established by the Legal Services Act 2007 (“the Act”), which provides that in discharging its functions, the LSB must comply with and thus promote eight regulatory objectives.
2. In exercising its functions, the Act requires the LSB to approve or refuse applications from approved regulators for the practising fee that they intend to charge to those that they regulate and make rules for that process.
3. Following consultation, the LSB has made the Practising Fee Rules 2021 (“Rules”) and statutory Guidance to the Rules (“Guidance”). They revoke and replace the Practising Fee Rules 2016 and accompanying guidance. The Rules and Guidance will come into effect on 29 January 2021.
4. This document sets out the LSB’s decision and response to the consultation on proposals for draft Rules and draft Guidance, which was published on 30 June 2020 and closed for responses on 8 October 2020.
5. The Rules provide a clear framework to improve 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, and the application process and procedure. The Rules also set out the information approved regulators are required to submit with their application. This includes matters approved regulators or regulatory bodies may have already provided to their respective boards to enable them to make informed decisions on the level of the practising fee.
6. A key aim of the Rules is to increase transparency about the approved regulators’ and regulatory bodies’ programmes of activity, which are funded in whole or in part by the practising fee, enabling those who pay the practising fee to drive accountability for its expenditure. This should lead to a more meaningful debate on the purpose, benefits, costs, and value of regulation, intended to improve standards across the sector and promote the regulatory objectives. The Rules will inform the LSB’s oversight responsibilities and 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.

What we did

7. On 30 June 2020, we published a consultation document¹, which set out the draft Rules and draft Guidance, following engagement and discussion with approved regulators and regulatory bodies in early 2020 on the LSB’s working proposals. The working proposals were developed to address key themes identified in a review of previous practising fee applications. Although the Rules were remade in 2016, prior to this review the process for

¹ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/07/LSB-consultation-proposed-Practising-Fee-Rules-2020.pdf>

assessing practising fee applications remained largely unchanged since it was first introduced in 2011.

8. We received ten responses to the consultation. A list of the individual respondents is at paragraph 24 and [copies of the responses](#) can be found on the LSB website.

Changes we have made

9. The main body of this document sets out our consideration of the key cross-cutting issues raised by the consultation responses and our conclusions based on these. We have also set out a more detailed summary of our consideration of responses to the consultation questions in paragraphs 32 to 45 and in respect of each draft rule and the accompanying draft guidance. The final Rules and Guidance are at Annex A.
10. We have made the following main changes to the draft Rules and draft Guidance as a result of the responses to the consultation:
 - powers to make rules – we have refined the drafting of the Rules so that they more closely reflect our policy intent and more clearly align with our powers to make the Rules and Guidance under the Act. This clarifies the distinction that, while the setting of the level of the practising fee and its approval are regulatory functions, the LSB is prohibited under the Act from exercising its powers in relation to representative functions, including those that fall within the permitted purposes.
 - proportionality – we have revised our requirements in respect of regulatory impact assessments and the extent of the financial information to be provided with an application, to reduce the overall amount of information that needs to be provided.
 - process and procedure – we have clarified and expanded on certain procedural aspects of the draft Rules and draft Guidance, including reinstating the provision in the Practising Fee Rules 2016 which allows an approved regulator to collect a limited interim practising fee where a practising fee application is refused by the LSB, pending resubmission of a revised application.
 - technical drafting changes – we have made drafting changes for clarity, consistency and to improve minor drafting points in response to the submissions made in respect of specific provisions in the draft Rules and draft Guidance.
11. We are grateful to everyone who responded to the consultation. We recognise that stakeholders have dedicated time and effort to analysing our proposals and providing us with constructive feedback. We have considered all the submissions received and issues raised by stakeholders carefully and have made amendments to the Rules and Guidance as appropriate.

Introduction

About the Legal Services Board

12. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Act to hold regulators for the different branches of the legal services profession to account.
13. The Act provides that in discharging its functions, the LSB must comply with and thus promote eight regulatory objectives. These are:
- Protecting and promoting the public interest
 - Supporting the constitutional principle of the rule of law
 - Improving access to justice
 - Protecting and promoting the interests of consumers
 - Promoting competition in the provision of legal services
 - Encouraging an independent, strong, diverse, and effective profession
 - Increasing public understanding of the citizen's legal rights and duties
 - Promoting and maintaining adherence (by authorised persons) to the professional principles.
14. The Act gives the LSB the functions to approve or refuse applications from approved regulators for the practising fee that they intend to charge to those that they regulate, and to make rules for this process. This paper sets out the LSB's response to submissions received to the consultation on draft Rules and draft Guidance.

About the sector

15. The legal services sector:
- supports the rule of law and access to justice, which are fundamental pillars of a fair society and central to our unwritten constitution;
 - underpins the operation of English and Welsh law, which in turn supports all economic activity including the growth and development of new businesses and protection of employee and consumer rights; and
 - employs 348,000 people and has an annual turnover of over £35.5 billion².
16. Authorised persons providing legal services must hold a current practising certificate from the relevant approved regulator. For 2020, the total practising fee income collected by the approved regulators was approximately £124.7m³.

² ONS figures for 2018.

³ This figure has been calculated on the basis of the estimated total practising fees each regulator would collect, as set out in each 2019 practising fee application.

The practising fee

17. A practising fee is payable by authorised persons to approved regulators only if the LSB has approved the level of that fee. Under section 51 of the Act the practising fee may only be used for permitted purposes and section 51(4) lists a number of activities that are permitted purposes. The LSB must make rules with provisions on the material, criteria, process, and procedure for applications and also specifying the permitted purposes (section 51(3) and (6) of the Act).
18. Although we last amended the practising fee rules and guidance in 2016⁴ (“2016 Rules” and “2016 Guidance”), our process for assessing practising fee applications remains largely unchanged since it was first introduced in 2011. In this time, the LSB’s overall approach to regulation has evolved significantly. In particular, we introduced our regulatory performance assessment framework in 2018 for assessing the regulatory bodies’ performance against a common set of standards and introduced new Internal Governance Rules in July 2019 on the delegation, and separation of, an approved regulator’s regulatory functions to an independent regulatory body.

Reviewing our framework

19. In 2019/20 we undertook a review of the practising fee approval process, including a targeted review of non-regulatory permitted purposes.
20. We assessed all practising fee applications for 2018/19 and 2019/20 and identified key themes, which underpinned and informed the development of some initial working proposals for discussion with approved regulators and their regulatory bodies.
21. In February 2020, we held the first round of our engagement with all approved regulators and regulatory bodies on our initial working proposals and held workshops in March 2020. We received constructive feedback, which helped to inform the proposals consulted on.
22. On 30 July 2020, we published our consultation on the draft Practising Fee Rules and accompanying draft statutory Guidance. The consultation closed on 8 October 2020. The consultation set out a new proposed framework for practising fee approval. This is our response to that consultation.

The outcomes we are seeking

23. The Rules, and the accompanying Guidance, aim to achieve the following outcomes:
- 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.

⁴ Practising Fee Rules 2016 (version 2: 1 June 2016) and Guidance to Approved Regulators on Practising Certificate Fee (PCF) applications

- 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.
- 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.
- to inform the LSB's wider oversight responsibilities.

Analysis of consultation responses

24. We received ten responses to the consultation, two from approved regulators and eight from regulatory bodies:

- The Bar Council ("BC")
- Bar Standards Board ("BSB")
- CILEx Regulation ("CILEx Reg")
- Costs Lawyers Standards Board ("CLSB")
- Council for Licensed Conveyancers ("CLC")
- The Institute of Chartered Accountants in England and Wales ("ICAEW")
- The Intellectual Property Regulation Board ("IPReg")
- Master of Faculties ("MoF")
- Solicitors Regulation Authority ("SRA")
- The Law Society ("TLS").

25. We have published all of the responses in full on our website. In this analysis, we set out the key issues which were identified by respondents and indicate whether they were raised by one or more respondent.

26. This section contains an overview of the main issues raised in responses to the consultation and our consideration of these. Under the first heading we examine the key cross-cutting issues, and then provide a more detailed summary of the responses to specific provisions of the draft Rules and draft Guidance.

Analysis of consultation response by cross-cutting issues

27. The main cross-cutting issues raised by the respondents to the consultations are set out below, with our response. These are issues that are relevant to more than one provision in the Rules.

Scope of the draft Rules

28. One respondent considered that certain provisions of the draft Rules and draft Guidance go beyond the rule-making power in section 51 of the Act and risked potential interference with approved regulators' representative functions. It submitted that the draft Rules and draft Guidance seemed to impose requirements that assumed practising fee funding of non-regulatory permitted purposes was exceptional and therefore subject to

more onerous requirements contrary to section 51. The respondent cited what it perceived to be a requirement for a regulatory body to hold and control practising fee reserves unless the approved regulator demonstrated this was not practicable, and for an approved regulator to justify using practising fee income for multiple purpose representative functions, as examples. It also contended that the setting of the practising fee to fund non-regulatory permitted purposes is not a regulatory function to be discharged in accordance with an approved regulator's duty to promote the regulatory objectives under section 28 of the Act. Other respondents considered that taking account of regulators' regulatory performance assessment as part of the practising fee approval process may not be aligned with section 51.

LSB response:

Regulatory arrangements

We have carefully considered these submissions and accept that the distinction the Act draws between regulatory functions and representative functions could be further clarified in the Rules and Guidance.

The Act prohibits the LSB from exercising its functions in relation to any representative function of an approved regulator (section 29(1)). However, the Act also provides that an approved regulator may only apply the practising fee to the permitted purposes, which include activities that are representative functions and regulatory functions (s51(2) and (4)). The Act further provides that the practising fee is payable by authorised persons only with LSB approval (section 51(5)).

An approved regulator's regulatory functions are any functions which it has under or in relation to its regulatory arrangements, or in connection with the making or alteration of those arrangements (section 27(1)). The practising fee is payable under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for a person to be authorised to carry out reserved legal activities (section 51(1)).

Against the above background, our position is that *the setting of the practising fee* i.e. the whole of the fee by an approved regulator, as well as the approved regulator's application for approval to the LSB, are regulatory functions under the Act.

Duty to promote the regulatory objectives

Approved regulators have a duty to promote the regulatory objectives when they are acting under regulatory functions, such as setting the level of the fee (section 28 of the Act). The LSB is under the same duty to promote the regulatory objectives in discharging its functions (section 3).

Approved regulators are not required to promote the regulatory objectives in so far as they are pursuing representative functions and the LSB is prohibited from exercising its functions in relation to an approved regulator's representative functions (section 29).

In setting the level of the fee, an approved regulator must inevitably consider its representative functions as well as its regulatory functions.

Therefore, the LSB is obliged to require that approved regulators demonstrate a clear relationship between the costs of the regulatory functions and representative functions which they undertake or propose, and how that is said to justify an element of the practising fee (section 3(3) and section 28(3)).

Changes we have made

We have made changes to the draft Rules and draft Guidance to clarify that the regulatory objectives, and the Better Regulation Principles, in particular transparency, are applicable where an approved regulator is exercising their regulatory functions by setting the level of the practising fee and making an application for approval of the fee. We have clarified that these requirements and the LSB's oversight is not applicable where the approved regulator is making decisions as to how it will pursue its representative functions, including for the purposes of setting the fee (Rule 14 and related parts of the Guidance). We discuss the changes to the Overarching Criteria set out in Rule 14 in detail in paragraph 39.

We have also made changes to clarify that an approved regulator needs to demonstrate a clear link between the level of the fee and the costs of the activity being funded. In doing so, we have removed the provisions in the draft Rules and draft Guidance requiring approved regulators to explain why an activity cannot be delineated to only be applied for permitted purposes, where it intends to apply funds to an activity which has multiple purposes one or more of which is not a permitted purpose.

Instead, we have clarified the general provision requiring approved regulators to set out how the application of the practising fee will comply with section 51(2) of the Act by clearly setting out the programme of activity to which the practising fee will be applied, which permitted purpose(s) each activity is for, and where an activity is for permitted purposes and non-permitted purposes, explain why it is of the opinion that the activity complies with section 51(2) (Rule 16). We have also made a consequential change in Rule 14 to clarify that the assessment of the benefits of activities funded by the practising fee is required only for activities funded by the practising fee which relate to regulatory functions.

In addition, we have made clearer in the Guidance relating to the Rules on reserves (Section H) our policy intent for practising fee reserves relating to the regulatory functions only, to be held separately by an approved regulator's regulatory body if there is one, as far as reasonably practicable.

Regulatory performance assessments

Rule 29(d) requires the LSB to be satisfied that the practising fees allocated to regulatory functions are sufficient to effectively discharge those functions. We have made some minor technical drafting changes to Rule 29(d) for clarity and consistency to better reflect the fundamental requirement for the practising fee to be set at a level sufficient for an approved regulator to effectively discharge its regulatory functions.

Taking on board the concerns raised in the consultation about the consideration of regulatory performance assessments of approved regulators under the practising fee approval process, we have revised the Guidance to give further clarity on matters that may arise, which we may properly take into account when assessing practising fee applications. For example, if an approved regulator has made commitments to address any unmet regulatory performance outcomes, we would expect to see meaningful workstreams aligned to these commitments reflected in the regulator's activities for the year ahead. If we have raised concerns about the capacity and capability of the regulator to carry out its regulatory functions, this will be taken into account when assessing the practising fee application and whether the regulator is adequately resourced.

Ultimately, this to ensure that an approved regulator is sufficiently resourced to be an effective regulator for legal services in pursuit of the regulatory objectives.

Proportionality

29. In the consultation, we invited respondents to comment on the proportionality of the proposals. Some respondents, in particular regulators with a smaller legal services register, considered that the draft Rules were complex and introduced a practising fee approval process which would place a disproportionate regulatory burden on them. It was submitted that the requirement to conduct initial equality impact assessments (EIA) and regulatory impact assessments (RIA) regardless of whether any increase in the practising fee was proposed, was disproportionate and would lead to an increase in the costs.
30. Some respondents requested further detailed information on the assessments. Other respondents considered that the draft Rules are too prescriptive and that the LSB should reduce the amount and type of information, in particular financial information, it requires for practising fee applications, given that the Internal Governance Rules 2019 have empowered the independent regulatory boards and the autonomy regulatory bodies have over regulatory budgets. They considered that the draft Rules would create duplication in this regard.
31. One respondent suggested that a possible solution is to make explicitly clear in the Guidance that the scope of any impact assessment carried out by a regulator should be proportionate to the level of potential harm that the assessment is designed to address.

LSB response:

We have carefully considered the submissions made relating to proportionality and have introduced a number of changes to reduce the overall level of information required from applicants.

Impact assessments

On reflection, while RIAs can be a valuable tool for assessing the impact of regulatory reform, we have sympathy with the approved regulators and regulatory bodies' concerns that they may be disproportionate for setting the level of practising fee. We consider that there are more proportionate means of achieving our objectives, than the proposal for a mandatory RIA, and then a full RIA.

Having reviewed our policy position, we have decided not to implement these requirements. Instead, approved regulators will be required to demonstrate that they have considered the impact of the level of the fee on the legal services market.

We have carefully considered the submissions on the requirement for approved regulators to carry out an initial EIA. We have decided not to change our approach as the need for a meaningful consideration of equality issues is relevant in particular to the regulatory objective to encourage an independent, strong, diverse and effective profession. In addition, the LSB has additional obligations under the Equality Act 2010 that are relevant to this issue.

Rule 27 now provides that in setting the practising fee, approved regulators must consider the impact of the level of the fee on the conduct of legal services by authorised persons, and any significant circumstance or event impacting on the same.

Financial information

We were persuaded by respondents' views that in the normal course of events the proposal for approved regulators to provide financial information covering a three-year period would be burdensome. To this end, we have made revisions to the requirements concerning the provision of financial information at Rule 17, so that the three-year forecast only applies where the approved regulator is currently aware of and expects a material change in expenditure or income in future years.

Duplication

Our experience of assessing applications identified a need to set out clear information requirements in the Rules, supported by the Guidance. Indeed, approved regulators have themselves sought more clarity in this regard in the past. The lack of clarity and information provided in some practising fee

applications to date, has meant that the LSB has needed to seek information from the approved regulator which has led to delays in processing an application.

The Rules more clearly articulate the information approved regulators and/or regulatory bodies are to include with their application to the LSB (Rule 9(b) and (c) and Annex A of the Guidance) compared to the 2016 Rules. Much of this information relates to matters that approved regulators or regulatory bodies are likely to have already provided to their respective boards to enable them to make an informed decision on the level of the practising fee to apply for. As such, we do not expect the information requirements should be overly burdensome, particularly given that the approval is being sought to impose a mandatory fee on authorised persons.

Summary of consultation responses on specific draft Rules and LSB response

Definitions (Rule 1) and Application and Guidance (Rules 2 to 4)

32. One respondent disagreed with the use of “applicable persons” which is defined in Rule 1 as including “relevant authorised persons and any other person regulated by the approved regulator.” The respondent noted that because section 51 of the Act provides that practising fees relate to “persons authorised to carry on one or more activities which are reserved legal activities” and refers to this class of persons as “relevant authorised persons”, there is no recognition of a definition for the wider term of “applicable persons” as used in the draft Rule 8.
33. One respondent submitted that the draft Rules and draft Guidance should carry over Rule 4 of the 2016 Rules which provides that in the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

LSB response:

Rules 1 and 8

“Applicable persons” was inserted into the previous versions of the practising fee rules to allow for the regulation of persons who are on the roll but are non-practising barristers. This term was incorporated into the rules in September 2009, when we first consulted on them. We concluded in the decision document⁵ that this could also be equally applicable to non-practising solicitors and that “*broadening the ambit of the existing permitted purposes to allow application of funds in respect of non-practising lawyers is sensible and should be incorporated into the LSB’s rules*”. The LSB has discretion to specify permitted purposes in the Rules, in addition to those prescribed under section 51 of the Act. Removal of the term ‘applicable persons’ would have the effect of narrowing the range of activities that fall within permitted purposes and

5

which may be funded by the practising fee and thus limit the regulatory activities approved regulators currently fund with the practising fee. In view of this, we consider that it would be sensible to retain this definition and reference to it in the provisions specifying the permitted purposes.

Rule 4 of the 2016 Rules

The Rules are made by the LSB under section 51 of the Act and as such, the primary legislation enacted by Parliament under which these Rules are made prevails as a matter of law. We consider that the inclusion of a specific rule on this to be unnecessary.

Legal Framework (Rules 5 to 8)

34. One respondent commented that draft Rule 8(b) should be amended to reflect levy payments imposed under section 173 of the Act rather than section 172.
35. One respondent submitted that the payment of a levy imposed on the approved regulator under the Act ought to be a specified permitted purpose. This respondent also submitted that draft Rule 8(b) should be amended to reflect the payment of statutory levies imposed under other statutory regimes which fall within permitted purposes. For example, some of the approved regulators have a levy imposed by the Office for Professional Body Anti-Money Laundering Supervision (“OPBAS”).
36. One respondent queried why no information is to be provided about the LSB and OLC levy.

LSB response:

Rule 8(b)

We have corrected a drafting error so that Rule 8(b) now cites section 173 of the Act. The LSB considers that the payment of the levy to OPBAS and legal services levies (such as the SDT levy for the SRA) fall within Rule 8 (a) and (b). This has been clarified in the Guidance.

The OLC and LSB levy is indicated in the LSB business plan consultation which is published in the month of December in the year before each practising fee cycle, providing approved regulators and regulatory bodies with notice to allow them to attribute part of the proposed practising fee to these levies.

Procedure (Rules 9 to 13)

37. One respondent submitted that while it supports the concept of consistency through the use of a standardised template for practising fee applications (in Annex A of the

Guidance) the requirement to do so in Rule 9 (b) may limit the financial information they can include.

38. Other respondents also considered that there is a need for the introduction of an upper time limit for the LSB to make a decision on practising fee applications.

LSB response:

Rule 9

We have amended Rule 9 so that it is no longer a requirement to use a proforma. A practising fee application should contain information set out in Annex A to the Guidance.

Rules 10 and 11

Rules 10 and 11 oblige the LSB to notify the approved regulator in writing of the estimated timescale in which it will make a decision, and where it is unable to meet this timescale, to give further notice in writing. The latter is intended to apply in circumstances where there has been a delay in receiving prompt replies from approved regulators and regulatory bodies to any queries arising from an application or where required information is missing.

While we have not made changes to Rules 10 and 11, we have introduced in the Guidance an upper time limit of 35 calendar days for the LSB to make a decision on the application (on receipt of the application). This may be extended in exceptional circumstances, for example if there is a delay in the provision of information by approved regulators or regulatory bodies, or significant gaps in the practising fee application which are not met on request to allow a decision to be made within 35 days. We have balanced the need to make timely decisions against the practical difficulties that can arise where a lack of requested information provided in a timely manner inhibits such decision-making. As reflected in the Guidance we will make decisions within 35 days. While the 2016 Guidance states that we will aim to make a decision within three weeks of receipt of an application if possible, based on experience, 35 days is a sufficient and realistic timeframe for an application to be fully considered, allowing time for the LSB to make any further necessary enquiries and for full responses to be received from approved regulators. Any extension to this timeframe would be in exceptional circumstances. Our experience is that well-presented applications that demonstrate positive engagement with the process tend to be approved more quickly.

New Rule 12

We have also inserted a requirement in new Rule 12 that where the LSB requires the approved regulator to re-submit an application, the LSB must set out reasons for doing so in writing, for transparency. We have revised the draft Rules and draft Guidance having reflected on respondents' views.

Overarching Criteria (Rule 14)

39. Below is a summary of the responses in relation to the overarching criteria (Rule 14):

- one respondent considered that the criteria would be better placed in the Guidance; it duplicates provisions (in particular Rule 14(a)) elsewhere in the Rules.
- one respondent considered that the criteria are too broad, go beyond the intention of section 51 of the Act and fails to distinguish the pursuit of permitted non-regulatory purposes that do not involve “regulatory activities” where an approved regulator owes no statutory duty to discharge these functions by reference to the “regulatory objectives” or best “regulatory” practice.
- one respondent considered that the transparency criterion in Rule 14(a), should focus on ensuring that the regulators’ processes for setting, collecting and spending the practising fee are transparent and fair to the regulators’ stakeholders; providing itemised details for the programme of activity may be difficult due to the need for flexibility when unforeseen and unpredictable circumstances come into play; and more clarity was sought on the level of detail that the LSB expects for the programme of activity.
- one respondent considered that the accountability criterion in Rule 14(b) should not be used to address issues raised under the regulatory performance assessment framework, as contemplated in paragraph 42 of the draft Guidance.
- one respondent considered that the LSB should set out its criteria for assessing the impact of progress against the regulatory performance framework on the practising fee application.
- two respondents considered that the criteria in Rule 14(c) (proportionality) and (d) (consistency) contain elements which are the role of the regulatory board and the LSB is encroaching on this role and creating duplication. The proportionality criterion does not give an indication as to how the LSB will determine whether the regulator is effective or assess the efficiency and cost-effectiveness of its work.

LSB response:
<p>Rule 14</p> <p>The five criteria at paragraphs (a) to (e) of Rule 14 reflect the principles applicable to the discharge of an approved regulator’s regulatory functions set out in section 28(3) of the Act. This follows from ‘Section C: Legal Framework’ (Rules 5 to 8), which makes clear that the practising fee is part of an approved regulator’s regulatory arrangements.</p> <p>We consider that the Overarching Criteria provides a framework for the Rules and therefore is better placed in the Rules than the Guidance. However, we have made some modifications to Rule 14 for the reasons set out at paragraph</p>

28 in response to the issues raised by respondents to clarify the distinction between regulatory functions, and representative functions, having regard to the LSB and the approved regulators' obligations under sections 3 and 28, and in respect of the practising fee approval process. These modifications are set out below.

Rule 14(a) Transparency

We have clarified Rule 14(a) to provide that an approved regulator should be clear on how it will assess the benefits of activities, in respect of its regulatory functions, which it proposes to fund with the practising fee. This assessment requirement does not apply to those activities in respect of an approved regulator's representative functions. However, we have retained the requirement for an approved regulator to provide transparency on how it proposes to apply the practising fee to a programme of activity of permitted purposes that may include both regulatory functions and representative functions. While the setting of the practising fee and its approval are regulatory functions, we recognise and have clarified that these requirements and the LSB's oversight is not applicable where the approved regulator is making decisions as to how it will pursue its representative functions, including for the purposes of setting the fee.

We have made similar drafting changes to Rule 14(b) (accountability) (d) (consistency) and (e) (targeted where action) to clarify that these criteria apply to regulatory functions only. We have also made associated changes in the Guidance to reflect the above.

We accept that the programmes of activity may change due to unforeseen and unpredictable circumstances and have reflected this in the Guidance. We have provided a template to assist in setting the programme of activity in Annex A of the Guidance. We would expect the programmes of activity to describe each activity (whether a core regulatory activity or a standalone project) for the practising fee year.

Rule 14(c) Proportionality and (d) Consistency.

We have carefully considered the specific submissions on duplication, relating to the activities of the regulatory board and the LSB's role but are not persuaded to make any changes in this regard. As set out in paragraph 29, much of the information requested relates to matters that approved regulators or regulatory bodies are likely to have already provided to their respective boards to enable them to make an informed decision on the level of the practising fee to apply for. Our conclusion is that these criteria are appropriate and proportionate, as they relate to the efficiency and cost-effective manner in which the approved regulators and regulatory bodies discharge their regulatory function against a clear plan with identifiable priorities.

We have clarified in the Guidance that we will assess the efficiency and cost effectiveness of the discharge of regulatory activities by considering at a high level how the costs allocated to each activity have been calculated.

Allocation of Practising fee to Permitted Purposes (Rules 15 to 17)

40. We received the following responses regarding the draft Rules around the permitted purposes:

- two respondents noted that the Rules and Guidance require a breakdown of detail in relation to permitted purposes which is disproportionate and should not apply to regulatory bodies which collect their own fees and do not pass any of them to the approved regulator.
- as set out in paragraph 28 one respondent sought clarification on the purpose and meaning of the requirement for approved regulators intending to apply practising fee income to representative functions with multiple purposes, not all of which are permitted purposes, to provide a detailed explanation of the efforts to delineate this funding and justification for this. This respondent considered that that the LSB should explain the basis on which the LSB considers it permissible to seek information from approved regulators in relation to representative activities that do not relate to permitted purposes under section 51 of the Act.
- one respondent commented that as much of the information required would be held by the regulatory body and in view of changes imposed under the Internal Governance Rules 2019 to enhance regulatory independence, the Rules and Guidance should make explicitly clear that regulatory bodies are under a duty to provide all necessary information to approved regulators. The respondent also requested confirmation that the LSB will engage directly with the regulatory bodies where there is any outstanding information that the regulatory body may need to provide

LSB response:

Rule 16

Approved regulators, and their regulatory bodies if they have one, need to be transparent about their expenditure on regulatory permitted purposes. Given the mandatory nature of the practising fee, it is reasonable to expect approved regulators to provide this transparency of their own volition, and therefore satisfying the provisions of Rule 16 ought to be relatively straightforward.

Rule 16 is intended to ensure transparency in the activities that the proposed practising fee to be levied on authorised persons will fund. This includes transparency where an activity may have both a permitted purpose and other (non-permitted) purpose. We have redrafted this Rule to clarify this purpose in view of the concerns raised. Rule 16 will require the approved regulator to

state how the practising fee is compliant with section 51(2) of the Act, by setting out the programme of activity to which the practising fee will be applied, and which permitted purpose each activity is for. The approved regulator must ensure that the activity falls within one or more permitted purposes. Where an activity has both a permitted and non-permitted purpose(s), the approved regulator needs to explain why it is of the opinion that the application of the practising fee is nonetheless in compliance with section 51(2) of the Act. As set out in paragraph 28 above, we have removed these provisions from the Rules.

The LSB has clarified in the Guidance that we will engage directly with regulatory bodies should we require further information that they hold, rather than the approved regulator.

Financial information (Rule 17)

41. We received the following responses regarding the draft Rules relating to financial information to be provided as part of the practising fee application:

- one respondent said that the LSB has not explained why it considers the provision of three years approved regulators' forecasts is necessary or useful.
- two respondents questioned whether a variance in actual and budgeted income or expenditure of more than 2% represents a "significant variance" as reflected in the draft Guidance. Of these two respondents, one said that the variance percentage should be determined by the approved regulator or regulatory body and not the LSB, the other respondent suggested that 10% would be a more proportionate number.
- two respondents noted that providing income and expenditure on an accruals basis could be problematic as at the time the practising fee is submitted, they are only part way through the financial year expenditure. Actual expenditure will only be known at the end of the financial year.
- one respondent asked if the Guidance could address the following areas:
 - whether the LSB expects the Consumer Price Index (CPI) should apply to the practising fee charged to the individual/entity and whether this will be treated as an increase in the practising fee.
 - greater detail on what is meant by "commercial income derived from permitted purposes".
 - whether the three-year forecasts will apply to both the approved regulator and the regulatory body

LSB response:

Rule 17

In response to submissions, we have made the following changes. We have revised Rule 17, to now provide that we will only require three-year income and expenditure forecasts where the approved regulator and regulatory body expects a material change in income and expenditure over the period (for example, a material increase in expenditure to accommodate a significant project or alternatively a cost-cutting exercise). We have amended the relevant Guidance to reflect this change.

We have also amended the Guidance to increase from 2% to 5% the variance between the actual and budgeted income or expenditure which we consider represents a 'significant variance'.

Draft Rule 18

Draft Rule 18 required approved regulators and regulatory bodies to provide financial information on the basis of accruals rather than cash, if reasonably practicable. On reflection, as this is not an absolute requirement, it is more appropriate for this to be set out in the Guidance. We have therefore omitted this draft rule from the Rules.

We have also revised the Guidance to address the other areas of clarity sought;

- An inflationary increase to the practising fee is at the discretion of the approved regulator and regulatory body but we would expect them to use CPI as the inflationary index. An inflationary increase will be regarded by the LSB as an increase to the practising fee.
- The elements of the three-year forecast will apply to both the approved regulator's and regulatory body's permitted purposes income and expenditure.
- We have provided more explanation in paragraph 77 of the Guidance on the meaning of 'commercial income derived from permitted purposes' and its use. Given that the regulated community have no choice but to pay the fee, we consider it important that they know how income and resources will be allocated, and whether they are from permitted or non-permitted activities and sources. This applies to any funds where there is an intention to use commercial income arising from practising fee funded permitted purposes (so called "derivative income") for non-permitted activities. It requires the approved regulator to be clear and transparent about its allocation of financial resources to ensure accountability in the public interest. We expect that if approved regulators wish to use derivative income, they are transparent about how the funds are to be allocated. The LSB needs to understand what

impact this would have on the actual fee the regulated community is expected to pay.

Reserves (Rules 18 to 22)

42. We received the following responses on the Rules relating to reserves:

- one respondent commented that the draft Rule which specifically relate to the separation of representative and regulatory work should be applied only to those relevant approved regulators with representative and regulatory functions.
- one respondent noted that the requirement that regulatory bodies hold practising fee reserves separately (as far as reasonably practicable), subordinates the funding for non-regulatory permitted purposes below funding for regulatory permitted purposes. Neither the Act nor the Internal Governance Rules 2019 prohibit the use of practising fee reserves by approved regulators for representative permitted purposes or require that regulatory bodies ‘control’ practising fee reserves for (regulatory) permitted purposes nor for the use of such reserves for representative permitted purposes to be subject to exceptional justification.
- one respondent commented that the draft Rules do not accommodate regulatory bodies with different models and that draft Rule 19 does not recognise the practicalities and synergies in accounting and banking. This respondent requested further clarity on what is meant by “uncommitted reserve” and “adverse circumstances”. Further, it would be inappropriate to expect the regulator to provide reserves for any adverse circumstance.
- one respondent considered that the LSB appears to be setting an expectation that reserve levels need to be reduced and in doing so is restricting the freedom of approved regulators and regulatory bodies to manage their reserves as they see fit.
- one respondent submitted that the draft Guidance suggests that any surpluses over the target level of reserves should be used to lower fees. This approach is likely to result in fee volatility and increased uncertainty for the regulated community. The respondent suggests that the excess reserves from year 1 should be applied to meet envisaged expenditure in the year 2 budget.
- One respondent sought clarity on whether the reserves accumulated by an approved regulator owing to commercial activities undertaken as a result of work under permitted purposes, are practising fee reserves, and whether the approved regulator or regulatory body should hold the reserves.

LSB response:

We recognise the importance of well-managed reserves and the Rules seek to ensure that applicants have policies on reserves and are prudent in setting the target levels of the different types of reserves which they hold. They should aim to insure themselves appropriately and proportionately against reasonable risks without unnecessarily inflating the costs to the regulated community, which could ultimately be passed on to consumers.

Rule 19

Rule 19 allows an approved regulator to hold reserves of practising fee income, but only if these are held and accounted for separately from any other funding. This is reflected clearly in the Guidance. No change has been made here.

The policy aim of Rule 19, is not to require regulatory bodies to hold their own reserves (although that is a valid model and may be the most appropriate in a range of circumstances), simply that they must have “no strings” access to appropriate reserves and have a policy that governs the management of the reserves. Having considered the representations made on this point, we have clarified this in the Guidance by deleting the reference to approved regulators having to justify why they have retained any part of the practising fee reserves which are not for a regulatory function.

Rules 20 and 21

“Uncommitted reserves” is defined in Rule 1 as the sum of reserves held by the approved regulator or regulatory body which have not been allocated to any ring-fenced commitments. No change has been made to this definition. However, we have clarified the Guidance to provide that “adverse circumstances” does not include unforeseen circumstances such as Covid-19. We accept the representations made on this point.

Guidance

We have amended paragraph 99 of the Guidance to state that approved regulators and regulatory bodies should consider using surpluses above the target level of practising fee reserves to offset planned expenditure in the following year.

The target level for reserves of 3 to 6 months operating costs is the industry standard, so we have not changed this in the Guidance. The Guidance states that if an approved regulator and regulatory body departs from this, that body should provide an explanation. In other words, this requirement is not mandatory and approved regulators and regulatory bodies have discretion – they will need to provide reasons as to why they are unable to do this if that is the case.

All income generated from permitted purposes activities should fall into the permitted purposes or practising fee reserves. Rule 19 makes clear that if the approved regulator has a separate regulatory body, that regulatory body should manage its own practising fee reserves as far as reasonably practicable. There is no requirement that reserves only be used later for permitted purposes within the same category of permitted purpose as set out in Rule 8. The key is that approved regulators and regulatory bodies must be transparent about their reserves.

Consultation and engagement (Rules 23 and 24)

43. We received the following responses on the draft Rules relating to consultation and engagement:

- two respondents note that engagement through strategic planning activity may be more meaningful than seeking views on the narrower question of what the practising fee should be. If an approved regulator and regulatory body has engaged stakeholders as part of its strategic planning, it should not be required to repeat the same task annually as part of the practising fee process.
- one respondent noted that there are challenges with getting the regulated community to engage with the practising fee consultation. The LSB should take these challenges into account. A lack of response to a consultation should not be used as a measure for the level of endeavours or engagement.
- one respondent considered that consulting on the practising fee when the fee is the same as the previous year is unnecessary.
- one respondent noted that the proposed new requirements would be more time consuming due to greater and more detailed evidence being required.
- one respondent considered that the LSB should provide details of the LSB's programme of activities, proposed levy and other relevant information that would inform and assist an approved regulator's practising fee consultation.

LSB response:

Rules 23 and 24

The draft Rules and draft Guidance were intended to give flexibility for the approved regulator and regulatory body on when and how it consults but it must be on the programme of activity and the level of practising fee. As such, while we have considered the responses on this issue, we have not made any changes to the Rules and Guidance because we consider they proportionately address flexibility concerns.

Approved regulators should set out the steps they have taken to engage and consult with their regulated community, the level of engagement, the

responses and how these have been taken into account. The LSB will consider the efforts made by the approved regulator to engage, not only the response rates. Each approved regulator should be able to demonstrate that they had produced consultation materials which are fit for purpose, taken reasonable steps to remove any barriers to participation (such as short consultation periods unless justified), provided easy mechanisms to respond, and made all reasonable efforts to reach those with an interest.

Effective engagement is important for transparency, accountability and for regulators to understand the impact of their proposals on their regulated community, irrespective of whether or not a fee increase is proposed.

Details of the LSB's annual proposed programme of activities, proposed levy and other relevant information is now publicly consulted on in its business plan yearly, before being finalised. Approved regulators and regulatory bodies may respond to that consultation, as well use that information when preparing their practising fee applications.

Impact Assessments (Rules 25 to 28)

44. The representations made by respondents on the proportionality of EIAs and RIAs, our response, and the changes we have made to the draft Rules have already been set out in paragraph 29 above.

Decision by the LSB (Rules 31 to 33)

45. We received the following responses on draft Rule 31 that sets out five criteria an approved regulator must satisfy for the LSB to approve their practising fee application, which are transparency, accountability, proportionality, consistency and targeted where action is needed.

- multiple respondents did not support the omission of Rule 14 (d) of the 2016 Rules, on a limited interim collection where a practising fee application is refused by the LSB pending resubmission. They contend this removes a contingency, in the event a practising fee application is refused. They consider that the LSB should retain a modified version of the provision in the 2016 Rules which would permit an approved regulator and regulatory body to collect the same fee as it had the year before if it were asking for an increase and that increase had not yet been approved by the LSB.
- one respondent said the draft Rules (32 and 33) neglect to appreciate the impact of Covid-19 and the repercussions that would follow from the LSB refusing an application. Draft Rule 32, which permits the LSB to refuse to approve all or part of the practising fee, does not cater for exemptions or waivers in the case of exceptional circumstances.

- one respondent questioned whether the LSB had the ability, under section 51(6) and (7) of the Act, to require approved regulators to use uncommitted reserves pending the delayed determination of a practising fee if an application is refused.
- one respondent requested that the LSB should set out the criteria it will apply to assess progress against recommendations made in its previous practising fee decisions and the regulatory performance framework and how that will influence the LSB's decision on that regulator's practising fee application. Another respondent requested that the LSB set out how it will assess progress against recommendations made in its previous practising fee decisions and the regulatory performance framework, and how will that influence the LSB's decision on that regulator's practising fee application.

LSB response:

New Rule 31

We recognise the strength of the responses on this issue and have inserted new Rule 31 (restating the equivalent provision in the 2016 Rules), which allows for the collection of a limited interim practising fee where a practising fee application is refused by the LSB, pending resubmission. Although we would consider refusal of an application to be a last resort, this Rule 31 will allow for approved regulators to collect limited funds if needed in order to be able to continue to operate effectively pending resubmission of the application and the LSB's decision. The LSB will determine the level of limited interim fee to be collected based on the information set out in the practising fee application. We do not consider it appropriate to create a rule which allows for the collection of the interim fee to be equivalent to the previous years' practising fee.

There is no requirement for approved regulators or regulatory bodies to resort to the use of its reserves, pending approval of a re-submitted application but if the LSB considers that the criteria in Rule 29 is not met, the LSB must have the ability to refuse an application. This is why Rule 32 asks that approved regulators or regulatory bodies set out in their 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.

The Guidance makes clear that the LSB would encourage each approved regulator and regulatory body to engage informally with the LSB before submitting their application so any potential issues may be identified and addressed. Any concerns about how the refusal criteria will apply to specific circumstances can also be addressed by early engagement with the LSB.

As set out in paragraph 28 above, we have revised the Guidance to clarify our intent, to take into account specific aspects of regulatory performance when assessing the practising fee application. If a regulator has made commitments to address its unmet regulatory performance outcomes, major workstreams associated to these commitments should where possible be reflected in the regulator's activities for the year ahead. If we have raised concerns about the

capacity and capability of the regulator to carry out its regulatory function, this will be taken into account when assessing the practising fee application and whether the regulator is adequately resourced).

Rule 29(e) and the accompanying Guidance makes clear that if the approved regulator has not satisfied the LSB that it has addressed any significant areas of concern raised by the LSB in the previous year's application, or if it has not, provided a reasonable explanation as to why not, then the application may be refused in whole or in part. Therefore, no change has been made.

Equality Act assessment

46. We received no representations from approved regulators or regulatory bodies referencing equality matters. The LSB has considered its obligations under the Equality Act 2010, including having due regard to the public sector equality duty, in reviewing our 2016 Rules and 2016 Guidance and developing a new framework.
47. The Rules introduce a requirement that approved regulators and regulatory bodies conduct an initial equality assessment of the anticipated impact of the practising fee level on members of their regulated community with any protected characteristic (as defined in the Equality Act). If there is a negative impact, approved regulators must conduct a full equality impact assessment. The aim of these Rules is to ensure approved regulators fully consider the equality impact of their practising fee proposals and enhance their accountability for expenditure of practising fee funds. It will also inform the LSB's oversight responsibilities and give the LSB a better understanding of the impact of the proposals on different groups with protected characteristics. This is relevant to the regulatory objective to encourage an independent, strong, diverse, and effective profession, in particular.
48. We have considered whether the Rules and Guidance will have a negative effect on the protected characteristics. Our conclusion is that we do not foresee any negative effects, although we will keep this under review. Therefore overall, we expect these changes to provide the opportunity for a positive impact on equality, diversity and inclusion and the promotion of a diverse and effective profession.

Regulatory Impact assessment

49. In the consultation, the LSB invited respondents to comment on the impact of the draft Rules and quantify the likely costs associated with compliance with the draft Rules and anticipated benefits, to further inform the LSB's assessment of the regulatory impact of the proposals in the draft Rules. While no respondents quantified the likely costs and associated benefits, some made representations on the additional regulatory burden that the proposals would impose on them.
50. We have taken into account these representations and made changes aimed at ensuring the Rules are a proportionate, transparent, targeted and effective means of achieving sufficient transparency to allow those that pay the practising fee to drive accountability for

the expenditure of practising fee income. These changes to Rule 17 and Rule 27 are detailed at paragraphs 41 and 44 above. We have therefore reduced the overall level of information that applicants will be required to submit.

51. Although we accept that the Rules require some additional information to be set out in the practising fee application, much of this information relates to matters that we would expect approved regulators or regulatory bodies to have already provided to their respective boards to enable them to make an informed decision on the level of the practising fee to apply for. As such, we do not envisage the information requirements will be unduly burdensome when balanced against the insight it would give as to whether the level of the practising fee is proportionate and sufficient to allow the approved regulator to effectively discharge its regulatory functions. This is particularly important given that approval is being sought to impose a mandatory fee on authorised persons.

Next steps

52. The Rules and Guidance will come into effect on 29 January 2021.

Annex A: Practising Fee Rules 2021 and Guidance

PRACTISING FEE RULES 2021

29 January 2021

The Legal Services Board has, on 29 January 2021, made the following Rules under section 51(3) and (6) 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 consists of or includes “legal activity” 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 18.

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 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(3) and (6) 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. In doing so 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 173 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 –
 - a. be made in writing;
 - b. include the information specified in Annex A to the Guidance; and
 - c. attach such evidence and material as is specified in Annex A to the Guidance.
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; or
 - b. the Board is unable to provide a decision within this time period and notifies the approved regulator in writing.
12. Where the Board requires the approved regulator to re-submit an application, the Board must set out reasons for doing so in writing.
13. 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

14. 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 practising fee to a programme of activity, and how the benefits of those activities which are regulatory functions 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 in respect of its regulatory functions 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 the practising fee should follow a clear plan and with identifiable priorities in respect of the approved regulator's regulatory functions.
 - 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 in respect of the approved regulator's regulatory functions.

F. Allocation of Practising Fee to Permitted Purposes

15. 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.
16. An approved regulator must state how the application of the practising fee will comply with section 51(2) of the Act by clearly setting out –
 - a. the programme of activity to which the practising fee will be applied; which permitted purpose(s) each activity is for; and

- b. where an activity is for permitted purposes and non-permitted purposes, explain why the approved regulator is of the opinion the application of the fee to that activity is nonetheless in compliance 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;
 - b. income and expenditure forecasts, including practising fee income, for the year in which the practising fee will be levied; and
 - c. 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, where the approved regulator expects a material change in expenditure or income.

H. Reserves

18. An approved regulator must hold any reserves generated from surpluses of the practising fee (“practising fee reserves”) separately from any other funds.
19. If the approved regulator has a separate regulatory body, the regulatory body should manage its own practising fee reserves as far as reasonably practicable.
20. 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 that must include detail on -
 - 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; and
 - 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.
21. 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.
22. Rule 21 does not apply to any reserves which would not be made available for the discharge of regulatory functions.

I. Consultation and Engagement

23. 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.
24. The approved regulator should engage effectively with as many relevant authorised persons as reasonably practicable on the matters set out in Rule 23.

J. Impact Assessments

25. Before applying to the Board for approval of the practising fee, an approved regulator must conduct an initial equality impact assessment.
26. 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.
27. When setting the level of the practising fee, an approved regulator must consider –
- a. the impact of the level of the fee on the conduct of legal services by authorised persons; and
 - b. any significant circumstance or event impacting on the conduct of legal services by authorised persons.
28. An approved regulator must provide –
- a. a summary of the assessments carried out under Rule 25, and Rule 26 if applicable, and the findings of those assessments;
 - b. a summary of the consideration under Rule 27;
 - c. details of any action taken as a result of the findings and consideration under Rules 25, 26 and 27 as applicable or, if no action has been taken, an explanation of why this was not necessary or practicable; and
 - d. any other information that may be required by the Guidance.

K. Decision by the Board

29. 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 practising fee, or any part of the fee, is reasonable and proportionate;
 - d. the amounts raised by the practising fees to be applied 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.
30. 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
 - c. require the approved regulator to resubmit the application (in whole or in part) addressing the matters set out in Rule 29.
31. Where Rule 30 applies, the Board must specify the circumstances, if any, in which the approved regulator may charge a limited practising fee under its regulatory arrangements as an interim measure pending consideration and approval, subject to Rule 29, of any application.
32. 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.

LSB Guidance on Practising Fee Rules 2021

This is statutory guidance under section 162 Legal Services Act 2007

29 January 2021

Guidance

Introduction

1. The Legal Services Board (“LSB”) is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Legal Services Act 2007 (“the Act”) to hold regulators for the different branches of the legal services profession to account.
2. The Act provides that in discharging its functions, the LSB must comply with and thus promote eight regulatory objectives. The LSB’s functions include oversight of the practising fee levied by each approved regulator on persons authorised to provide legal services. The Act requires the LSB to approve or refuse applications from approved regulators for the practising fee that they intend to charge to those that they regulate.
3. A practising fee is payable to approved regulators only if the LSB has approved the level of that fee. Under section 51 of the Act the practising fee may only be used for a permitted purpose(s).
4. Section 51(3) and (6) of the Act obliges the LSB to make rules specifying the permitted purposes, with provisions on the criteria, material, process, and procedure for applications. Accordingly, the Practising Fee Rules 2021 (“Rules”) have been made by the LSB under these provisions of the Act.
5. This Guidance on practising fee application and approval is given by the LSB under section 162 of the Act. Approved regulators must have regard to this Guidance in the preparation of their practising fee applications, as required under Rule 4 of the Rules.

Purpose

6. The Rules are intended to provide a clear practising fee application and approval framework for approved regulators and their regulatory bodies, including on the criteria that applications must satisfy.
7. A key aim of the Rules is to increase transparency about the approved regulators’ and regulatory bodies’ programmes of activity, which are funded in whole or in part by the practising fee, enabling those who pay the practising fee to drive accountability for its expenditure. This should lead to a meaningful debate on the purpose, benefits, costs and value of regulation, which ought to result in ongoing improvement in standards across the sector.
8. The framework should allow regulatory bodies to demonstrate that they have sufficient funds and financial resilience to regulate and operate efficiently and cost effectively.
9. The Rules and approval framework will inform the LSB’s wider oversight responsibilities, including its regulatory performance assessment framework.

Structure of Guidance

10. This Guidance is divided into ten sections (B to K), mirroring each section of the Rules (section A of the Rules is the definitions provision and is therefore excluded). Each section sets out its purpose, an overview of the key points made in the Guidance and gives guidance on each of the Rules. These sections are:
 - B: Application and Guidance
 - C: Legal Framework
 - D: Procedure
 - E: Overarching Criteria
 - F: Allocation of Practising Fee to Permitted Purposes
 - G: Financial Information
 - H: Reserves
 - I: Consultation and Engagement
 - J: Impact Assessments
 - K: Decisions by the Board

Section B: Application and Guidance (Rules 2 to 4)

Purpose

11. This section sets out the LSB's duty under Section 51 of the Act to make rules for approved regulators on practising fee application and approval.
12. Each approved regulator *must* comply with the Rules when applying to the LSB to approve their practising fee.
13. Where an approved regulator's regulatory functions are exercised by a separate regulatory body, the regulatory body must provide the approved regulator with all information necessary for an application under the Rules.
14. In seeking to comply with the Rules, each approved regulator must have regard to this Guidance.

Section C: Legal Framework (Rules 5 to 8)

Purpose

15. This section sets out the legal framework prescribed by the Act for an application made by an approved regulator to the LSB for approval of the practising fee and the permitted purposes to which that practising fee may be applied.

Key Points

16. The setting of the practising fee and the application by an approved regulator for approval of that fee are regulatory functions. Regulatory functions must be discharged in accordance with section 28 of the Act, which makes clear that in doing so an approved regulator must act in a way which is compatible with the regulatory objectives and which they consider most appropriate for meeting those objectives, so far as reasonably practicable. Section 28 of the Act also requires the approved regulator to have regard to the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. These principles are addressed in Rule 14 and 'Section E: Overarching Criteria' of this Guidance.
17. The approved regulator should have essentially, two guiding principles in setting the practising fee; the permitted purposes and the regulatory objectives. In doing so the approved regulator *may only* apply the practising fee for the permitted purpose(s) and must, so far as reasonably practicable act, compatibly with and in a way it considers most appropriate for meeting the regulatory objectives.

Guidance on Specific Rules

Rule 5

18. This Rule repeats section 51(5) of the Act. As the practising fee is a regulatory arrangement, any functions 'under or in relation to' the fee or 'in connection with the making or alteration' of the fee are regulatory functions, in accordance with section 27(1) of the Act.

Rules 6 to 7

19. Rule 6 follows on from Rule 5. As the setting of the practising fee is a regulatory function, the approved regulator's obligations under section 28 of the Act apply.
20. Rule 7 repeats section 51(2) of the Act; the amounts raised by the practising fee may only be applied for the permitted purposes, which are set out at Rule 8.
21. The approved regulator therefore should have two aims when it comes to setting the level of the practising fee:
 - Firstly, the fee *may only* be applied for the permitted purposes. Therefore, the activities which the practising fee will fund, in whole or in part, must fall with the permitted purposes.
 - Secondly, the fee must be set and applied for in accordance with section 28 of the Act. It must be compatible with the regulatory objectives and applied for in a way that the approved regulator considers most appropriate for meeting those objectives (so far as is reasonably practicable).
22. The regulatory objectives are set out at section 1(1) of the Act:
 - a) Protecting and promoting the public interest;
 - b) Supporting the constitutional principle of the rule of law;

- c) Improving access to justice;
 - d) Protecting and promoting the interests of consumers;
 - e) Promoting competition in the provision of legal services;
 - f) Encouraging an independent, strong, diverse and effective legal profession;
 - g) Increasing public understanding of the citizen's legal rights and duties;
 - h) Promoting and maintaining adherence to the professional principles.
23. In complying with their obligations, the LSB would expect each approved regulator to make clear which activities are to be funded by the practising fee and which permitted purpose(s) each activity is for. This is further supported by 'Section F: Allocation of Practising Fee to Permitted Purposes' (Rules 15 and 16).
24. The LSB would then expect each approved regulator to establish that those activities which are regulatory functions are consistent with the regulatory objectives and determine the most appropriate way of meeting those objectives (as far as reasonably practicable). This may be achieved by addressing which regulatory objectives are met by each activity, or group of activities. For activities which are representative functions, approved regulators are not required to consider the regulatory objectives.

Rule 8

25. Rule 8 sets out the permitted purposes for which the practising fee may be applied. The permitted purposes in Rule 8 repeat those prescribed in section 51(4) of the Act and the Practising Fee Rules 2016 (adopted following consultation in 2010), modified to provide clarity on the permitted purposes below.
26. Rule 8(b) enables the approved regulator to apply part of the practising fee to the payment of a financial penalty under section 37 of the Act.
27. Rule 8(h) enables an approved regulator to apply part of the practising fee to prevent any person, who is not properly authorised, from holding themselves out as such a person.

Section D: Procedure (Rules 9 to 13)

Purpose

28. The aim of Rules 9 to 13 and this section is to set out the procedure, manner and form which each approved regulator must follow when applying to the LSB to approve the level of their practising fee.

Key points

29. The LSB will determine the approved regulator's application within the time period it specifies in writing upon receipt of the application that includes the information, evidence and material set out in Annex A to this Guidance.

30. We will make a decision within 35 calendar days. Approved regulators will be notified in writing of receipt of an application and when they can expect a decision. The LSB will use all reasonable endeavours to provide a decision promptly within the period notified. There may be occasions where this will not be possible (for example where an application raises a number of questions requiring further consideration and/or further information is to be provided by the approved regulator). The approved regulator will be notified in advance if there is a delay and the reasons as set out under Rule 11(b). Any extension beyond the 35-day period will be in exceptional circumstances and for a reasonable period, taking into account the circumstances of each case.
31. Further time will be required to consider applications which the approved regulator has to re-submit in whole or in part. This is likely to arise where there has been a failure to comply with the Rules or to properly consider this Guidance. Where the Board requires the approved regulator to resubmit an application it will set out its reasons for doing so in writing.
32. Following section 51(7) of the Act, the LSB has the right to consult any person, including the Consumer Panel, about an application for approval of the practising fee and the impact that it may have on persons providing non-commercial legal services.

Section E: Overarching Criteria (Rule 14)

Purpose

33. This section sets out the LSB's overarching expectations of approved regulators in setting their practising fee and applying for approval. Detail as to how the approved regulator may meet these criteria is set out below.

Key Points

34. The five criteria at paragraphs (a) to (e) of Rule 14 reflect the principles applicable to the discharge of an approved regulator's regulatory functions set out at section 28(3) of the Act. This follows from 'Section C: Legal Framework' (Rules 5 to 8), which makes clear that the practising fee is part of an approved regulator's regulatory arrangements.
35. In determining the level of the practising fee, each approved regulator should consider the programme of activity to be funded, which permitted purpose(s) are met by the activities, how the programme in so far as it relates to regulatory functions will support the regulatory objectives, and allocation of funding in accordance with the approved regulator's strategic objectives and priorities. For those activities which fall within regulatory functions, they should also consider how the programme will support the regulatory objectives. An approved regulator is not required to consider the regulatory objectives in respect of its choice of permitted activities which fall within representative functions and is not subject to the LSB's oversight in respect of those activities.

Guidance on Specific Rules

Rule 14(a): Transparency

36. 'Programme of activity' is defined in Rule 1 as the activities which will be funded, in whole or in part, by the practising fee. In order to comply with Rule 14(a) on transparency the approved regulator must in determining the level of the fee make clear *what* these activities are and *how* the funds will be applied to each activity, with reference to the permitted purposes. Further, for those activities that are regulatory functions, *why* this will benefit the regulated community and/or consumers, with reference to the regulatory objectives.
37. The LSB recognises that the approved regulator's programme of activity will include different types of activities; some of the funding will be used for core activities to comply with their regulatory and legal obligations, such as the setting and application for approval of the practising fee. The benefit of these types of activity will be readily accepted by the LSB. Further explanation will only be necessary if the fees allocated to these types of activity increase significantly.
38. Part of the practising fee will be applied to other activities of the approved regulator, beyond their core legal obligations under the Act. The approved regulator will be expected to set out how it will measure the benefits of those activities which are regulatory functions. This should include how the approved regulator has assessed the anticipated benefits at the point that the programme of activity was determined and how it will assess the actual benefits after the activity has been completed.
39. This Rule is supported by 'Section F: Allocation of Practising Fee to Permitted Purposes', (Rules 15 and 16).

Rule 14(b): Accountability

40. Each approved regulator should proactively engage with relevant authorised persons about the level of the practising fee and the programme of activity to which it will be applied. This should include consideration of the application of the practising fee for the previous year and the anticipated versus actual benefits produced.
41. The approved regulator must make clear how they have sought to engage with relevant authorised persons, and how any responses have been taken into account.
42. The approved regulator will be expected to refer to steps it may have taken to address any concerns raised by the LSB in the previous practising fee application. In addition, where applicable, we will take into account specific aspects of an approved regulator's regulatory performance when assessing the PCF application. This may be where a regulator has made commitments to address any unmet regulatory performance outcomes it may have. For example, major workstreams associated to those commitments should where possible be reflected in the regulator's activities for the year ahead, or where we have raised concerns about whether the regulator is adequately resourced to have the capacity and capability to carry out its regulatory functions under the Well-led Standard.⁶

⁶ Well-led standard, outcome 2 (WL2): 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.

43. This Rule is supported by ‘Section I: Consultation and Engagement’ (Rules 23 and 24).

Rule 14(c): Proportionality

44. The approved regulator should set out clearly:

- the level of funding required to deliver their programme of activity;
- how that cost has been distributed amongst the regulated community, e.g. between firm versus individual practising fees and across different income bands, with an explanation of the reasoning for this distribution;
- the amount which is allocated to each of the activities within the programme of activity; and
- how the allocated fees have been calculated, so as to ensure the activity in relation to its regulatory functions is carried out effectively and efficiently⁷.

45. The approved regulator should explain how the allocation of funds to those activities which are regulatory functions, will promote the regulatory objectives and ensure its ongoing financial resilience.

46. This Rule is supported by ‘Section F: Allocation of Practising Fee to Permitted Purposes’ (Rule 15) and ‘Section H: Reserves’ (Rule 21).

Rule 14(d): Consistency

47. Each approved regulator should set out its strategic objectives and priorities for the practising fee year. The practising fee should be allocated within the programme of activity consistently with those objectives and priorities in so far as they relate to the approved regulator’s regulatory functions.

Rule 14(e): Targeted where action is needed

48. As set out in ‘Section C: Legal Framework’, the practising fee is a regulatory arrangement. The approved regulator must set the fee in the way which it considers most appropriate to meet the regulatory objectives. The LSB would expect the approved regulator to explain how the programme of activity in respect of its regulatory functions, will support the regulatory objectives.

Section F: Allocation of Practising Fee to Permitted Purposes (Rules 15 to 16)

Purpose

49. The purpose of this section is to ensure that the practising fee is only used for permitted purposes and does not include any costs or activities which are not permitted purposes and therefore should not be charged to the regulated community through the practising fee. It is aimed at increasing transparency and accountability on the allocation of practising fee income to permitted purposes.

⁷ We will consider this at a high level.

Key Points

50. Each approved regulator should set out the amount of funding which will be allocated to the regulatory body and the amount which will be retained by the approved regulator. This should be expressed as actual figures and also as a percentage of the overall practising fee income. Where there are shared services, these should be allocated on the basis set out below.
51. Each approved regulator should justify all elements of the practising fee, by the activity to be funded and the permitted purpose which this activity is for.

Guidance on Specific Rules

Rule 15

52. Rule 15 only applies to approved regulators with both representative and regulatory functions. It is consistent with the LSB's obligation under the Act – and set out in Internal Governance Rules 2019 - to ensure that the approved regulator's regulatory functions are not prejudiced by its representative functions and decisions relating to the exercise of its regulatory functions are, as far as reasonably practicable, taken independently from its representative functions.
53. Each approved regulator should state the amount of the practising fee which will be allocated to the regulatory body and the amount to be retained by the approved regulator. These should be set out as actual figures and also as a percentage of the overall practising fee income.
54. This should be straightforward when applied to costs which are clearly delineated between the approved regulator and regulatory body, such as permanent staff costs. However, the LSB is aware that a number of approved regulators share some services with the regulatory body. When the approved regulator is addressing these costs, they should make clear that these are shared services and the basis of the apportionment of cost.
55. Shared services costs might include:
 - Expenses – such as travel, subsistence, accommodation and conferences. These should be directly allocated wherever possible or, where this is not possible, a reasonable apportionment may be applied on a case by case basis.
 - Premises costs – office space should be allocated on a square footage basis (a reasonable estimate may have to be made) and rent, service charges, utilities, cleaning and waste disposal should apply the same basis of allocation.
 - IT equipment and training – these should normally be based on headcount as expenditure per employee and should not usually vary according to hours worked.
 - Capital expenditure – this is the money an organisation or corporate body spends to buy, maintain, or improve its fixed assets, such as buildings, equipment, or land. It is considered a capital expenditure when the asset is newly purchased or when money is used towards extending the useful life of an existing asset, such as repairing the roof. Each year the reduction in value of the fixed asset must be calculated. This expenditure should be apportioned in the manner considered most appropriate by the approved regulator, with an explanation for the basis of apportionment.

- Miscellaneous costs – may be apportioned according to an aggregate percentage for other shared costs, unless there is another reasonable basis for calculating these.
56. In preparing these figures, each approved regulator should note the Rule 19 requirements in particular (see ‘Section H: Reserves’ Guidance) which requires that regulatory bodies should control its own practising fee reserves as far as reasonably practicable.

Rule 16

57. Section 51(2) of the Act makes clear that the practising fee may *only* be applied for the permitted purposes. Rule 16 requires each approved regulator to set out the programme of activity for the practising fee year. The information set out at Annex A of this Guidance sets out how this can be provided in an application. In forming the programme of activity, each approved regulator must identify which permitted purpose or purposes that activity is for and this should be stated next to each activity. That is, the activity will need to fall within a permitted purpose – this will be for the approved regulator to demonstrate by reference to how and why an activity fits one or more permitted purpose. The LSB would expect the approved regulator to state the figure allocated to the activity, also expressed as a percentage of the overall practising fee income. If the activity is to be funded by any other source of income, this should also be stated.
58. The LSB does not expect the practising fee to be attributed to all permitted purposes equally, but the approved regulator should explain, in accordance with ‘Section E: Overarching Criteria’ (Rule 14), the set of objectives and priorities which have led to the allocation of funding.

Section G: Financial Information (Rules 17)

Purpose

59. Rule 17 sets out the financial information which the LSB expects each approved regulator to include in its application for approval. Approved regulators will already have prepared much of the material required under the Rules, including analyses of costs, budgets and statements on reserves, for other purposes, whether statutory accounts or management reports to their board. Smaller approved regulators which are too small to be required to produce a statutory audit, nevertheless do produce budgets, forecasts and statements of activity that broadly reflect the requirements of the practising fee application.
60. The aim is provide transparency to the regulated community, clarity to approved regulators and consistency in the form of information in practising fee applications. This will enable the LSB to be confident that the approved regulator has carefully and properly planned its financial position going forward.

Key Points

61. Each approved regulator should provide their income and expenditure forecasts (including practising fee income) for the year in which the practising fee will be levied and financial information for the previous year in actual figures. Where the approved

regulator expects a material change in expenditure or income, it will need to provide income and expenditure forecasts for three years.

62. Where reasonably practicable the figures will need to be calculated on the accruals basis. The figures should be calculated net of VAT (unless irrecoverable) and using the Consumer Price Index where reasonably practicable.
63. Given that the regulated community have no choice but to pay the practising certificate fee, we consider it important that they know how income and resources will be allocated, and whether they are from permitted or non-permitted activities and sources. This would also apply where there is an intention to use commercial income arising from practising fee funded permitted purposes to fund non-permitted activities. It requires the approved regulator to be clear and transparent about its allocation of financial resources for accountability in the public interest.
64. Each approved regulator should address any significant (i.e. over 5%) variances between actual and budgeted income and expenditure over the previous year, by explaining why this occurred and how it has influenced the figures provided in the forecasts.
65. Each approved regulator should state the amounts they have raised, and expect to raise, from the practising fee including the number of persons who have paid or are expected to pay. If the approved regulator proposes to alter the fee, or its distribution, they should set out how this will affect the forecast of income and expenditure.

Guidance on Specific Rules

Rule 17

66. The LSB requires each approved regulator to provide financial information for the previous year including a comparison of actual and budgeted income and expenditure.
67. Each approved regulator should expressly state the level of income generated from the practising fee, the number of persons who paid this fee and any variance between that actual income and projected income. They should explain, in summary, any significant variances (more than 5%) between the forecast budget and the actual figures, including any activities budgeted for which have not been completed.
68. Variances should be expressed both in actual figures and as a percentage of the budgeted expenditure.
69. Where the approved regulator expects a material change to its income and expenditure, it will need to provide the forecast budget for three years from and including the year for which the practising fee is to be levied. A material change may for example be a substantial change to their funding or a significant IT project impacting on income and/or expenditure.
70. The LSB considers that the provision of forecasts for both income and expenditure for a three-year period where the approved regulator expects material changes will ensure in those circumstances proper long-term planning. Overall, this will provide a better opportunity for it to engage with the regulated community (and others) on the costs, benefits and value of regulation and promote the regulatory objectives. It will

also allow the LSB to make an informed evaluation of the approved regulator's financial position. The LSB recognises that in these circumstances, forecasts for years 2 and 3 will be indicative and will be re-evaluated in advance of future applications.

Employment costs

71. Employment costs form a significant component of the approved regulator's budget, particularly in relation to the smaller approved regulators and therefore should be addressed in the practising fee application.
72. If the application is submitted before the current financial year is complete, the financial information should include forecast figures for the remainder of the year.

Practising fee income

73. In providing income and expenditure forecasts, the approved regulator should state the forecast for the total amount of practising fee income they expect to receive, the numbers of practitioners they forecast will be paying this fee and at what level.
74. If the approved regulator proposes to alter the level of the fee or change the distribution of the fee in comparison to the current year, they should set out how this will affect the forecast of practising fee income both as a percentage and an actual figure. Where this is likely to lead to a significant increase or decrease in practising fee income, the approved regulator should explain how this change has been taken into account in its expenditure forecast.

Other sources of income

75. If the approved regulator expects to receive other sources of income, they should state where these are derived from and the level of risk connected with these. For example, income received from investments, or the use of any commercial income arising from practising fee funded permitted purposes.
76. If the approved regulator relies on income from voluntary payments (e.g. for representative functions), they should set out how they have come to estimate the amount of income and the risk that there may be to this funding.
77. Given that the regulated community have no choice but to pay the practising fee, we consider it important that they know how income and resources will be allocated, and whether they are from permitted or non-permitted activities and sources. This applies to any funds where there is an intention to use commercial income arising from practising fee funded permitted purposes (so called "derivative income") for non-permitted activities. It requires the approved regulator to be clear and transparent about its allocation of financial resources to ensure accountability in the public interest. We expect that if approved regulators wish to use derivative income, they are absolutely transparent about how the funds are to be allocated. The LSB needs to understand what impact this would have on the practising fee the regulated community is expected to pay.

LSB and OLC Levy

78. Approved regulators should provide an accurate presentation and representation of the LSB and Office for Legal Complaints (OLC) and other statutory levies, so the regulated community is clear about the proportion of the practising fee attributable to these levies.
79. The LSB expects each approved regulator to follow recognised accounting principles in the preparation of their financial information.
80. Figures provided for previous and forecast expenditure, where reasonably practicable need be on the basis of accruals, rather than cash. This means that the expenditure should be recorded when the cost is incurred, i.e. when the goods are delivered or services provided, rather than when it is actually paid (the cash basis). Approved regulators need to provide the figures on the basis of accruals only if it is reasonably practicable to do so. The LSB expects that most expenditure will be recorded on this basis and the approved regulator should provide a clear explanation for any figures which are on the cash basis.
81. The LSB expects the figures provided not to include VAT unless the VAT on a particular cost will not be recoverable. If this is the case, the approved regulator should make this clear and explain why they will not be able to recover the VAT.
82. The approved regulator should apply a recognised indexation (inflation) rate to all figures. In most applications the LSB would expect the indexation rate to be the Consumer Price Index (CPI). If an approved regulator applies a different rate, they should explain why they have done so.

Section H: Reserves (Rules 18 to 22)

Purpose

83. The purpose of this section is to ensure that approved regulators are prudent in setting the target levels of the different types of reserves which they hold. They should aim to appropriately and proportionately insure themselves against reasonable risks without unnecessarily inflating the costs to the regulated community, which could ultimately be passed on to consumers. They should be informed by their previous target levels of reserves against the accumulated reserves to date. The regulatory body (if separate) ought to have management and control of their practising fee reserve unless there is a specific reason why this needs to be retained by the approved regulator.

Key Points

84. The practising fee reserve must be held separately from any other reserves of the approved regulator. The regulatory body should have control of those reserves relevant to its regulatory functions, as far as reasonably practicable within the approved regulator's corporate structure.

85. The approved regulator should set out clearly the different types of reserves which they hold and distinguish between committed reserves and uncommitted reserves.
86. The target level of uncommitted reserves – defined in Rule 1 as the sum of reserves held by the approved regulator or regulatory body which have not been allocated to any ring-fenced commitments – must be sufficient to insure against reasonable risks and should be set out as both a figure and a proportion of monthly expenditure. If the target level is significantly more or less than 3 to 6 months of expenditure, this must be justified.
87. Any accrued practising fee reserves in excess of the target level ought to be returned to the regulated community by a corresponding reduction in the practising fee for the following year, or the approved regulator should explain why this would not be appropriate.

Guidance on Specific Rules

Rule 18

88. Rule 18 provides that an approved regulator may hold reserves of practising fee income, and where it does, those reserves must be held and accounted for separately from any other funding. Essentially this requires the approved regulator to ring-fence the practising fee income or reserves generated by surpluses from any other income or reserves. The LSB would expect practising fee reserves to be held in a separate account and to be subject to separate budgeting than other reserves or income held by the approved regulator.

Rule 19

89. Rule 19 reflects the LSB's obligation under the Act (section 30 and the Internal Governance Rules 2019 made under it) to ensure that regulatory functions are not prejudiced by representative functions and that decisions relating to regulatory functions are, as far as reasonably practicable, independent.
90. The LSB would expect the regulatory body to form its own policy for its own practising fee reserves relating to its regulatory functions, and to have management control over those reserves, as far as reasonably practicable within the structure of the organisation.
91. Each approved regulator should set out the arrangements it has in place to comply with Rule 19. For example, if the regulatory body has been incorporated as a separate company, it should be this company which holds and controls the account with the practising fee reserves that relate to regulatory functions. If the regulatory body is not a separate company, the LSB would expect there to be safeguards in place to ensure that decisions in connection with this fund relating to an approved regulator's regulatory functions are not prejudiced by its representative functions.

Rule 20

92. Approved regulators should have a clear policy on how it sets the target for the level of its reserves and manages those reserves, which it reviews each year.
93. The LSB expects each approved regulator to be prudent in setting their target level of reserves. They should seek to balance sufficient insurance against known risks

against unnecessarily increasing the cost to the regulated community. To assist the approved regulator to achieve this, they should state the different types of reserves held and the risks attached to each, which must include a separate reserve for practising fee funds.

94. The approved regulator should set out how the target level of their reserves have been reached. In particular, they should summarise the major strategic risks which these funds aim to mitigate and the level of risk attached to each.
95. Types of reserves which an approved regulator may hold include, but are not limited to; practising fee reserve, pension reserve, revaluation reserve and other restricted reserves (i.e. reserves which are not available to the general fund). Each approved regulator should set out the risks connected to each distinct type of reserve and their rationale for setting the target level of each fund.
96. Each approved regulator should distinguish between committed and uncommitted reserves. The approved regulator should set out the commitment and the target level of the reserve to meet that commitment. Part of the practising fee reserve may be a “committed reserve” if the approved regulator or regulatory body has identified a specific risk or risks which that fund has been allocated to.
97. Uncommitted reserves are defined in Rule 1 as ‘the sum of reserves held by the approved regulator or regulatory body which have not been allocated to any ring-fenced commitments’. The target level should be expressed as both a figure and also as a proportion of monthly expenditure.
98. Each approved regulator should specify the level of reserves held in each fund at the date of the application. If the level of reserves held exceeds or falls below the target level set for the year, they should explain how this has been taken into account in setting the target level of that fund for the following year.
99. Approved regulators and regulatory bodies should consider using surpluses above the target level of practising fee reserves to offset planned expenditure in the following year.
100. If the level of reserves held are below the target levels, we expect the approved regulator to provide the answers to the following questions in their practising fee application:
 - What steps are being taken to increase the reserves to the target level set out in their policy?
 - What is the timescale required to achieve this?
 - What will the effect be on the practising fee in the years until the target level is reached?
 - How will they ensure that the delivery of their strategic aims is not compromised?

Rule 21

101. This rule reflects the LSB’s expectation that each approved regulator will be prudent in setting its target level of practising fee reserves; they should be set at a sufficient level to insure against reasonably foreseeable risks, but not so high as to create

unnecessary cost to the regulated community. If the approved regulator has consistently held a significantly different level of accumulated reserves than their target level, this would suggest that the target level is not being set prudently and ought to be reflected in their application for approval by a change in approach.

102. The LSB expects the target level of practising fee reserves to be stated as a figure and a proportion of monthly expenditure. The LSB considers that the target level should normally be between 3 to 6 months of practising fee expenditure to ensure a reasonable level of financial resilience. Any target level which is below or above this proportion will require an explanation from the approved regulator as to how this nonetheless reflects a proper estimate of risk.

Rule 22

103. The LSB does not expect approved regulators to provide information required under Rule 21 about reserves which is not derived from the practising fee and is solely for representative functions. An approved regulator may choose to provide this information as part of the overview of their financial position but is not obliged to inform the LSB of this.

Section I: Consultation and Engagement (Rules 23 and 24)

Purpose of Section

104. This section sets out the LSB's expectations that approved regulators should consult and engage with their regulated community. Approved regulators should use the consultation as an opportunity to explain the costs, benefits and value of regulation. The LSB intends this to encourage meaningful engagement, to promote debate and discussion, and ultimately to support ongoing improvement in standards of regulation across the sector and promote the regulatory objectives. Approved regulators must consult on the proposed programme of activity and level of practising fee prior to making an application. When and how approved regulators consult is a matter for them to determine.

Key Points

105. Each approved regulator must consult the regulated community:
- about the programme of activity which the practising fee will fund,
 - on the level of the practising fee and any increase or decrease from the previous year; and
 - on the distribution of the practising fee across the regulated community with any changes to that distribution from the previous year.
106. Approved regulators must demonstrate that they have engaged effectively and that they have taken the regulated community's views into account.
107. Approved regulators must provide information of the benefits which they expect to derive from the programme of activities in respect to their regulatory functions.

Guidance on Specific Rules

Rules 23 and 24

108. Rules 23 and 24 require approved regulators to consult and engage effectively with as many members of their regulated community (as reasonably practicable) on how they propose to apply the practising fee to the programme of activity for the practising fee year. The LSB expects that the representative arm of the approved regulator and any other relevant representative bodies will be involved in this process.
109. Approved regulators should set out the steps they have taken to engage and consult with their regulated community, the level of engagement, the responses and how these have been taken into account. The LSB will consider the efforts made by the approved regulator to engage, not only the response rates.
110. Each approved regulator should demonstrate that they had produced consultation materials which are fit for purpose, removed as far as reasonably practicable any barriers to participation (such as short consultation periods unless justified), provided easy mechanisms to respond, and made all reasonable efforts to reach those who may have an interest.
111. Rule 14(a) requires that approved regulators make clear how they will assess the benefits of those activities which are regulatory functions. The LSB expects approved regulators to publish an account of what the expenditure of practising fee in the previous practising fee year has achieved.

Section J: Impact Assessments (Rules 25 to 28)

Purpose

112. Rules 25 to 28 aim to ensure that approved regulators give meaningful consideration to equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession. Section J of the Rules further aims to ensure that approved regulators strive to deliver better, proportionate regulation. Approved regulators should demonstrate a clear understanding of any changes or risks to their regulated community and how that has been taken into account when setting the practising fee.

Key points

113. Before submitting a practising fee application to the LSB, each approved regulator is required to conduct an initial Equality Impact Assessment (“EIA”) and consider the impact of the level of the fee on legal services carried out by authorised persons.
114. A full EIA must be carried out if the initial EIA finds an adverse impact on persons with (any of the) protected characteristics as defined under the Equality Act 2010. This must also be completed prior to a practising fee application being submitted to the LSB.
115. The approved regulator is required to provide a summary of the equality impact assessment and consideration of the impact of the level of the fee and their findings,

explain details of action taken, or if no action was taken, why this was not necessary or practicable.

Guidance on Specific Rules

Rule 25

Initial assessment

116. Rule 25 requires approved regulators to conduct an initial assessment of the anticipated impact of the practising fee level on members of their regulated community with any protected characteristic (as defined in the Equality Act) prior to submitting its practising fee application for approval.
117. An initial EIA should consider the likely impact of the level of the proposed practising fee on the regulated community with protected characteristics. This should include considering what impact it might have on barriers to access or progression for certain groups.
118. The LSB expects equality impact assessments to be informed by consultation with those impacted by the proposed fee. Therefore, an initial EIA should be prepared in a suitable form and within adequate time to gain input from stakeholders and inform the approved regulator's decision making. An illustrative EIA template is provided at Annex B.

Rule 26

Full EIA

119. Rule 26 states that if the initial EIA identifies an anticipated adverse impact on members of their regulated community with any protected characteristic, approved regulators must conduct a full impact assessment. This will demonstrate that the approved regulator properly understands the impact of the proposed practising fee on different groups with protected characteristics.
120. As a minimum, the LSB would expect that a full EIA should:
 - Identify any potential adverse impacts on those with protected characteristics and what alternative options have been considered to avoid this.
 - Detail and factor in relevant input and responses to consultation from impacted groups and consider whether more targeted engagement with these groups is required.
 - Identify remaining risks to equality, diversity and inclusion and what mitigating action has been considered and/or put in place.
 - Include clear plans for monitoring and responding to the actual impact and evaluating the effectiveness of any mitigating action that has been put in place.

Rule 27

Impact of level of fee on conduct of legal services

121. Under Rule 27 approved regulators in setting the level of the practising fee must consider the impact of the level of the fee on the conduct of legal services by authorised persons, and any significant circumstance or event impacting on the conduct of legal services. The depth of this assessment should be proportionate to the harm and will be for approved regulator and regulatory body to determine.

Rule 28

122. As set out in Rule 28, approved regulators should provide a summary of the assessments carried out (including whether these were initial or full EIAs) and its consideration of impact of the level of the fee, where applicable, and the findings.
123. Approved regulators must also set out 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.

Section K: Decision by the Board (Rules 29 to 32)

Purpose

124. The aim of this section is to set out in detail the matters of which the approved regulator must satisfy the LSB for their practising fee application to be approved, as provided for in Rules 29 to 32.

Key Points

125. Each approved regulator must address all of the matters set out at Rule 29 to the LSB's satisfaction for approval of their practising fee.
126. In assessing an application, the LSB will consider whether the approved regulator has complied with these Rules, has had regard to the Guidance, and addressed any significant areas of concerns raised in the previous year's application and if not, explain why. The LSB will also need to be satisfied that the practising fee will be applied only to permitted purposes, any increase is reasonable and proportionate, and that the fees are sufficient to effectively discharge an approved regulator's regulatory functions.
127. Any commitments the approved regulator has made to address any unmet regulatory performance outcomes under the regulatory performance assessment framework relating to capacity and capability to carry out regulatory functions, will need to be reflected in the programme of activity or an explanation given as to why this is not so.
128. Minor non-compliance with the Rules is unlikely to lead to a refusal under the Rules however the approved regulator may be required to resubmit parts of the application or to provide further information.
129. The LSB is likely to refuse the application, in whole or in part, if the approved regulator has not satisfied the LSB that the application complies with Rule 29(a) to (e).
130. Where the LSB refuses to approve an application in whole or part, under Section D of the Rules it will notify the approved regulator in writing.

131. In that notice the LSB is required under Rule 31 to specify the circumstances, if any, in which the approved regulator may charge a limited practising fee under its regulatory arrangements as an interim measure pending consideration of any re-submitted application, and approval subject to Rule 29. We consider refusal of an application to be a last resort. Rule 31 is intended to give approved regulators greater flexibility to ensure they are able to operate effectively if their practising fee collection is delayed, pending resubmission of an application and a decision on it. The LSB will determine the level of limited interim fee to be collected based on the information set out in the practising fee application.
132. If approved regulators consider that there is a risk of refusal, they should engage with the LSB at an early stage. In the event that an approved regulator does not wish to collect a limited interim fee, there should be arrangements in place for its continued operation in the event that the practising fee is not approved and as a consequence, collection of practising fees is not possible within the approved regulator's intended timeframe. The arrangements could include reliance on uncommitted reserves, and/or allowing extra time when submitting the application in case it is refused, to allow for it to be re-submitted in whole or in part for approval.
133. The LSB encourages each approved regulator to engage informally with the LSB before submitting their application so any potential issues may be identified and addressed.
134. Each approved regulator must sign a statement of compliance, in the manner set out Annex A before submitting their application for approval. The LSB expects each approved regulator to be satisfied of their own compliance before signing this statement.

Annex A: Proforma/Information required in Application for Approval



Information required for Practising Fee (PCF) applications submitted for approval by the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

Summary

The application by an approved regulator to the LSB under section 51 of the Act for the approval of PCF must include the information set out in this Annex¹.

Where an approved regulator's regulatory functions are exercised by a separate regulatory body, the regulatory body must provide the approved regulator with all information necessary to make an application under the Rules.

This Annex is to ensure consistency of information provided in all PCF applications. It reflects the Practising Fee Rules 2021² (Rules) and accompanying Guidance on the Rules³ (Guidance) and does not impose new requirements.

An approved regulator must comply with the Rules and have regard to the Guidance⁴ in applying to the LSB for approval of their level of PCF. In case of conflict between the Rules, Guidance and the Act, the provisions of the Act prevail.

As set out in paragraph 133 of the Guidance, we encourage the approved regulator to engage in early discussions with the LSB before submitting their application so any potential issues may be identified and addressed.

The approved regulator submitting an application takes responsibility for the accuracy and completeness of the information provided. The approved regulator must sign the statement of compliance in the manner set out below before submitting its application for approval.

On receipt of a PCF application, the LSB will notify the approved regulator in writing of the time period in which a decision will be provided which will usually be within 35 calendar days, subject to any extension, and will notify the approved regulator of its decision in writing pursuant to Rule 11.

¹ As required under Rule 9 of the Practising Fee Rules 2021.

² Link to Practising Fee Rules 2021.

³ Link to Guidance on Practising Fee Rules.

⁴ As required under Rule 4 of the Practising Fee Rules 2021.

Section(s)	
I	Summary and overview.
II to VI	The specific categories of information (which reflect the Rules) that approved regulators must provide when submitting a PCF application, to enable the LSB to assess the application, as applicable.
VII	Description or copy of the information that will be provided to fee paying members.
VIII	Checklist of information enclosed with the application and allows for the submission of any supporting materials.
IX	Compliance statement.

Confidential or commercially sensitive information

We intend to publish all PCF applications on our website⁵. If any information submitted as part of the application is considered by the approved regulator to be confidential or commercially sensitive, please state this in the cover email or letter which accompanies the application and provide reasons as to why the information in question should not be published.

Contents

The minimum level of information we expect from approved regulators is set out in bullet points. However, additional information may be provided, for example by reference to the Guidance.

Submission

We would prefer to receive applications electronically, but hard copy PCF applications are also welcome. Applications should be sent to:

Email: schedule4approvals@legalservicesboard.org.uk

Posted applications should be sent to:

Legal Services Board
3rd floor, The Rookery
2 Dyott Street
London
WC1A 1DE

⁵ <https://www.legalservicesboard.org.uk/our-work/statutory-decision-making/section-51-practising-fees>

Information required in an application

I. Summary and overview

This section asks for background information relating to the proposed PCF.

- Briefly summarise the proposed fee structure and levels and state whether the proposal is for an increase, decrease or no change to the PCF relative to the previous year. Include an explanation of why the fee level has changed (if applicable).

An application by the approved regulator must satisfy the LSB of all the matters in Rule 29 for the LSB to approve the PCF. Rule 30 provides that if the approved regulator fails to satisfy the LSB of any of the matters in Rule 29, the LSB may refuse to approve the entire or part of the practising fee and/or require the approved regulator to resubmit the application addressing the matter(s) set out in Rule 30.

- Explain the arrangements in place for the continued operation of the approved regulator in the event that the practising fee is not approved and as a consequence, collection of practising fees is not authorised within the intended timeframe.

- Please state how this application addresses concerns raised by the LSB in the previous year's PCF application, or under the regulatory performance assessment framework (if applicable).

- If any potential issues were identified in informal engagement with the LSB prior to the submission of an application, please state these, and how they are addressed, in the application.

II. Allocation of practising fee to permitted purposes (rules 8, 14-16)

Section 51(2) of the Act makes clear that an approved regulator may only apply amounts raised by practising fees for one or more of the *permitted purposes*. Further, as a regulatory function the level of the PCF must be set and applied for by the approved regulator in accordance with section 28 of the Act.

- Provide an outline and explanation of the programme of activity⁶ to be funded by the PCF during the practising fee year and which permitted purpose(s) each activity within the programme of activity is relevant to.
- For approved regulators with both representative and regulatory functions, set out the amount of the practising fee which will be allocated to the regulatory body and the amount to be retained. Where there are shared services between the approved regulator and the regulatory body, it should be made clear the costs that are shared services and the basis of the apportionment of cost.
- A template for setting out this information is provided below, which is optional to use.

Description of activity	% of total practising fee (and actual figure) allocated to activity	Permitted purpose	Strategic objective it is relevant to/ or expected benefit	Representative or Regulatory activity
e.g.				

- Pursuant to Rule 16, if any amounts raised by the PCF will fund an activity for multiple purposes, one or more of which is not a permitted purpose, please explain the basis on which the approved regulator is satisfied that the funding of that activity is nonetheless in compliance with section 51(2) of the Act.

⁶ 'Programme of Activity' is defined in the Rule 1 (Definitions) as the activities which the approved regulator intends to carry out during the practising fee year and will be funded, in whole or in part, by the practising fee.

- Description of how the activities that the fee will be applied to which are regulatory functions are consistent with the regulatory objectives (as far as reasonably practicable).

III. Financial information (rule 17)

This information must be prepared on the basis of accruals rather than cash, if reasonably practicable.

- **Income and expenditure forecasts**, including practising fee income, for the year in which the PCF will be levied. Where the approved regulator expects a material change in circumstances the income and expenditure forecast will need to cover three years from and including the year in which the PCF will be levied. The income and expenditure forecast should incorporate:
 - total income from all sources (PCF income and other sources), including any commercial income arising from PCF funded permitted purposes.
 - anticipated expenditure, including the payment of levies imposed on the approved regulator and expenditure on non-permitted purpose activities.
 - summary of how the budget was arrived at, including any consultation between the regulatory and representative arms.
- **Financial information for the previous year and actual expenditure**, including a comparison of actual and budgeted income and expenditure. Financial information provided for the previous year should include:
 - forecasted budget and actual expenditure and income
 - PCF income collected and a breakdown of how it was allocated or spent by activity.
 - an explanation of any variation in total PCF spending.

IV. Reserves (rules 18-22)

An approved regulator must hold any reserves generated from surpluses of the practising fee separately from any other funds.

- Explain the reserves policy. In particular, this should address:
 - how the target for the level of reserves is set and managed
 - the different types of reserves held, which must clearly distinguish practising fee reserves from other reserves
 - the target level for committed and uncommitted reserves
 - how the approved regulator will manage any accumulated reserves to date.
- If there was any variance at the end of the previous year between the target level of reserves and accumulated reserves, please provide an explanation of how this has been taken into account as part of this application.

V. Consultation and engagement on PCF (rules 23-24)

This section requires information in respect of Rules 23 and 24 which requires approved regulators to consult with relevant authorised persons about the programme of activity to which the practising fee will be applied and the level of the practising fee, and engage effectively with as many relevant authorised persons as reasonably practicable.

- Description of the consultation process conducted with relevant authorised persons on the programme of activity and the level of PCF⁷. To include:
 - length of time the published consultation was open
 - the level of engagement and responses from relevant authorised persons
 - summary of consultation responses
 - summary of how consultation responses have been taken into account, including changes to the PCF proposals as a result of consultation responses
 - details of consultation with non-commercial bodies (e.g. Law centres federation, Citizens Advice etc.) or an explanation of why their views had not been sought.

⁷ Approved regulators should consult annually on their programme of activity irrespective of whether if they are proposing a fee increase, if the fee has been static or has fallen.

VI. Impact assessments (rules 25-28)

This section requires information in respect of Rules 25-28 which collectively, stipulate that initial equality assessments must be carried out and set out in the circumstances in which full impact assessment must be conducted. These provisions also require that approved regulators consider the impact of the level of the fee on the conduct of legal services.

- Summarise the initial and (where applicable), full equality impact assessment carried out and the findings. In particular, this summary should cover how the proposed PCF may potentially impact on various groups, especially those with protected characteristics under the Equality Act 2010 within the approved regulator's membership.
- Summarise the consideration – proportionate to the harm as determined by the approved regulator - given to the impact of the level of the fee on the provision of legal services by authorised persons, and any significant circumstance or event impacting on that.
- Provide details of any action taken as a result of findings, or an explanation as to why this was not necessary or practicable.

VII. Transparency of PCF information to relevant authorised persons

- Description or a copy of the information that will be provided to those who will pay the fee. This should be clear and accessible and include the following:
 - the level of the PCF
 - how the PCF has been set
 - a breakdown of how the PCF income will be allocated to non-regulatory/regulatory and shared services
 - an explanation of why commercial income arising from PCF funded permitted purposes is to be used for non-permitted purposes.
 - an accurate presentation and representation of the LSB and Office for Legal Complaints (OLC) levies so the regulated community is clear about the proportion of PCF attributable to the levies

VIII. Checklist – Enclosures

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. Enclosed

Financial information for the previous year, including a comparison of actual and budgeted income and expenditure. Enclosed

Copy of the information that will be provided to fee paying members (if description is not provided in section VII). Enclosed

Details of any other supporting documents provided with the PCF application (optional):

IX. Compliance Statement

Applications must include the following compliance statement and be dated and signed by a representative of the approved regulator:

- ✓ I certify that the information provided in this application is accurate and complete to the best of my/our knowledge and I/we have taken reasonable steps to ensure that the application complies with the Rules.

Please include contact name(s) for the application.

Annex B: Equality Impact Assessment Template

Protected Characteristic Group	Is there a potential for positive or negative impact?	Please explain and give examples of any evidence/consultation/ data used	Action to address negative impact (e.g. adjustment to the policy)
Disability			
Gender reassignment			
Marriage or civil partnership			
Pregnancy and maternity			
Race			
Religion or belief			
Sexual orientation			
Sex (gender)			
Age			

Evaluation

Question	Explanation / justification	
Is it possible that the proposed level of PCF could discriminate or unfairly disadvantage members of the regulated community?		
Final Decision	Tick the relevant box	Include any explanation / justification required
No barriers identified		
Bias towards one or more groups		
Adapted PCF to eliminate bias		
Barriers or impact identified but having considered all options carefully, there appear to be no other proportionate ways to achieve the policy aims in the programme of activity but by charging this level of PCF.		

