



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

NOTARIES (PRACTISING CERTIFICATE) RULES 2012

APPLICATION FOR APPROVAL OF THE PRACTISING CERTIFICATE FEE FOR THE PRACTISING YEAR

1 NOVEMBER 2021 to 31 OCTOBER 2022

By email only: schedule4approvals@legalservicesboard.org.uk

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).

- The Faculty Office (FO) (on behalf of the Master of the Faculties) is proposing maintain the current practising certificate fees and bands for the practising certificate year 2021/22. The contingency fund maintains a healthy balance (£166,000) and for the second year running we will not be seeking any contribution to this fund. However, we are proposing to charge an additional levy to recover the historic deficit and build a reserve within a much shorter period than had been the case in order to address the LSB's concerns. The proposed levy will vary across the turnover bands as set out in the table below.

Table 1

Turnover	Practising Certificate Fee	Deficit/Reserve Levy contribution (for 2 years)	Contingency Fund contribution	Total
Up to £15,000	£470	£75	£0	£545
Up to £50,000	£580	£85	£0	£665
Up to £150,000	£820	£135	£0	£955

Up to £300,000	£1,020	£250	£0	£1,270
Over £300,000	£2,270	£300	£0	£2,570

2. The FO understands that it is the figures in the total column that represent the PCF as defined by Section 51(1) of the Legal Services Act 2007 being the contribution required from Approved Persons to be authorised to undertake Reserved Legal Activities by the FO. However, from a transparency and accounting perspective the FO believes that it is helpful to break this payment down into the three headings set out in the table.

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.

3. In financial terms, the FO would be able to continue to operate for a period of five months based on the cash held at the bank and the reserves held across the organisation (including the ecclesiastical arm). However, in practical terms a refusal of the entire (or indeed part) of the practising fee would create very significant logistical difficulties. The notarial practising year runs from 1st November and every notary's current practising certificate expires on 31st October 2021. If we were required to undertake the renewal process without being able to collect all or part of the fee the practicalities of recovering the full fee, or any balance, later in the year without the leverage of the issue of a practising certificate would be difficult and extremely time and resource heavy and thus divert resources away from the principal regulatory functions. This would have a damaging impact on our ability to protect the public/the consumer.

- 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).

4. The LSB identified four specific expectations to be addressed in this application:
- FO to provide a detailed expenditure breakdown.
5. This is set out in the Schedule to the Detailed Accounts enclosed with the application
- FO to develop a documented reserves policy and to detail its progress in achieving this goal
6. The FO reserves policy accompanies this application. As set out in the application, the FO halved the historic deficit in the year ending 31 March 2021. The proposed levy payment

will clear the remaining deficit in the current financial year and build the stated reserve by 31 March 2024.

- FO to consider a more detailed explanation of how consultation responses were considered and whether the feedback resulted in changes and, if not, the reasons for their decision.
7. A copy of the consultation response document accompanies this application with additional information set out in Section V.
- FO to provide information on how the new methodological approach to the PCF is progressing through a review of its bandings.
8. A desk-based review of the bandings has been conducted following the second year of their use. There remains a very significant divergence in the level of turnover generated from notarial work across the profession from those at one end whose notarial practice is something which they maintain having retired from other legal practice or whose notarial work is very much an adjunct to their primary (most commonly, solicitor's) legal practise with an annual turnover of less than £15k to those (primarily based in the City of London and other major commercial centres) whose practise is exclusively notarial and whose individual annual turnover is in excess (in some cases considerably in excess) of £300k. The FO moved away from a flat fee for every notary, to 5 turnover bands for the PCF year 2019/20 and the same bands were used in 2020/21. An assessment of the bandings has been undertaken after two years and we are content that they remain an equitable and effective collection mechanism and one which provides the FO with a reasonable degree of certainty of income. A more formal review will be conducted early in 2022 with the benefit of three years' experience and data with a view to assessing whether the 5-band structure remains appropriate or whether more, or fewer, bands would be fairer and/or whether the band levels need adjusting.
9. In addition, the LSB expressed concerns about the FO's performance in relation to outcome WL2 of the regulatory performance framework. The FO has, at the time of preparation of this application, received a draft report from the LSB following its review some three months later than had been envisaged. An initial response has been provided together with a draft Action Plan and an updated draft report has now been received which we are currently considering and which will be the subject of further discussions. We are not, therefore, yet in a position to fully and publicly respond.

- 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.

10. We are grateful to Steve Violet, Regulatory Policy Manager, of the LSB for the very helpful and constructive feedback on our preparatory application which we set out below in purple for ease of reference. Our responses are set out in black below each point or as pointed to elsewhere in this application.

General Points

A. It would be useful to see paragraph numbers added to the application. This will make it easier for us to refer to the application in the decision and would align with the approach taken by TLS/the SRA in their application this year.

11. Noted, and added.

Summary and overview

B. This section confirms there is not going to be a request for contingency fund contributions. In relation to the contingency fund it would be useful to understand:

- o how the fund increased by £12,000 despite the fact there were no contributions last year. For example some narrative around any recoveries
- o any call on the fund in the last year
- o any sense of what is in the pipeline for the fund.

Last year we were supplied with a copy of the contingency fund accounts. It would be useful for that to be repeated this year.

12. We have included a copy of the Contingency Fund Accounts.

13. Although no contribution was collected in the 2020/21 practising certificate year, there was an accrual from the contribution collected in 2019/20; of the contributions collected in November 2019, five months related to the 2019/20 accounting year and seven months to 2020/21 (£8,815). In addition, whilst they are noted separately, Notaries in the Channel Islands continue to contribute to the overall total in the fund (£2,625). The total contributions in the 2020/21 accounting year amounted to £11,440.

14. During the year we recovered a further £825 in respect of a debt due to the fund from a previous year but had net expenses (expenditure less recoveries) of £600 in respect of three disciplinary matters.

15. Whilst we have four matters under investigation at the current time, the FO is not anticipating any substantial call on the fund in the current year.

C. The proposed levy for clearing the deficit and building a reserve is also set out in this section. However, there is no explanation of how the FO has reached the figures that have been provided for each band. In band 4 the levy amounts to 24.51% of the PCF but for all the other bands it ranges from 13.22%-16.46% of the PCF. As it stands we can't understand the rationale behind the figures that have been chosen - an explanation would be helpful.

16. The starting point, as set out in our consultation paper, was the requirement to collect the *equivalent* of £200 per notary to clear the deficit and build the reserve. However, it was felt that this would be too blunt an instrument and effectively revert back to the flat rate fee payable by all notaries regardless of income which has been rejected as inequitable. An alternative would have been to recover the deficit from, say, the top three bands and leave those in the lowest two bands with no additional contribution; however, this would account for over half the profession and was also rejected as inequitable.

17. The lowest band, accounting for 44.7% of the profession were asked to pay £75 per year

which, as has been pointed out in a response to our consultation, amounts to less than what most notaries would charge for one notarial act. Band 2, accounting for a further 36% of the profession are being asked to pay £85 per year.

18. Whilst noting your observation that the band 4 levy, as a percentage of the PCF, seems out of kilter with the other bands, the average turnover of notaries in this band is £212,500 and the proposed levy payment represents 0.12% of the average turnover. Those in band 4 represent just 2.6% of the profession. The upper three bands, together amounting to 19.3% of the profession are carrying a substantial proportion of the deficit recovery but they are best placed to do so and the levy represents 0.16 %, 0.12% and 0.05% respectively of the average turnover in each of these bands.

D. It would also be useful for the FO to be clear that the levy is part of the PCF. It is (in line with s.51(1) of the LSA) a fee payable in circumstances where payment of the fee is a condition which must be satisfied for that person to be authorised by the FO in order to undertake reserved legal activities.

19. As now set out in paragraph 2 above, the FO are clear that we need authority from the LSB under s.51(1) of the LSA2007 to impose any charge on authorised persons as a condition precedent of their being authorised to practise. Although we distinguish the practising certificate fee element, the contingency fund contribution and (for this year and next) the deficit/reserve levy for accounting and transparency purposes, we are clear (and will make clear to the regulated community) that the whole sum represents the PCF for the purposes of the Act.

Addressing Concerns Raised by the LSB last year

E. This section of the application indicates there has been some assessment of the bandings. Further detail on how that assessment was undertaken would be welcome. Equally there is an expectation set out for a more formal review in 2022. Additional detail on what the formal assessment will consist of/when it will be completed would be very helpful.

20. As this was the second year that the bands had been used, the review was desk-based largely to assess whether there had been any significant movement between bands as compared to year one arising from the additional guidance issued as to the definition of turnover and/or the initial impact of lockdown I. This was important to ensure that the basis on which budgeted income forecasts are made were realistic. No *significant* movement was noted but there was some movement, principally between the lowest two bands, resulting in a slight increase (£14k) in PCF income over budget.

21. With the benefit of three years' experience of operating the banded PCF fee, the FO will look more closely at whether the current five bands continue to be appropriate, whether there should be any adjustment to the bands or whether additional bands should be introduced.

22. The feedback from the consultation on this year's PCF indicates that one, possibly two, additional bands might be welcomed. Against that must be weighed the added likelihood

of movement between a greater number of smaller bands which might result in greater fluctuation and less certainty in the FO principal income stream. The review will therefore look at not just the numbers of notaries in each of the bands but also whether there are clusters at or around the current band boundaries where relatively small fluctuations in turnover might push notaries up or down a band. We will also invite feedback from the profession as to their views on how the banded PCF has worked, what has worked and what improvements might be introduced whilst maintaining the certainty and simplicity of the system for the FO and its regulated community alike. We would anticipate conducting the review as soon as practicable after the conclusion of this year's practising certificate renewal round and certainly within the first quarter of 2022.

Programme of Activity

F. The programme of activity set out on page 4 of the application does not provide information on how much time or resource will be allocated to each activity. In last year's application there was information provided on the percentage of PCF income attributable to different activities. It would be useful for this exercise to be repeated.

23. This is always a very difficult assessment to make. The FO is a small regulator with a small staff nearly all of whom are involved in all aspects of our work; there are no discrete departments with separate budgets or dedicated staff focussing solely on appointments/accreditation or anti-money laundering or consumer engagement or disciplinary matters etc. All staff therefore have to be both pro-active in pursuing the programme set out by the Master and participating in the work streams forming the LSB's priorities as well as being re-active to issues which arise during the year and which are largely outside of our direct control such as dealing with complaints, disciplinary and enforcement matters if or when they arise. Whilst we do keep a note of the time actually spent on regulatory activities this is not broken down in specific detail as between the discrete areas. We indicated that in excess of 90% of PCF income is spent on the first of the Permitted Purposes. However, we have also now included an estimate in Section II (paragraphs 31-38) breaking down how that is split between the various activities.

G. In addition, the programme of activity currently lacks detail. I would like to be able to understand more specifically what work will be carried out under each of the headings. For example what actions are flowing from the Well-Led review and what activities are covered by the inspection, enforcement and disciplinary work. If anything is considered to be confidential it would be fine to include it in a confidential annex to the application.

24. We have included further detail in Section II to address this.

Financial Information

H. The section on financial information does not currently include income and expenditure forecasts. We appreciate that the consultation included budgets but there was limited detail included. Last year we were supplied with a spreadsheet that provided a breakdown of what was included in the management charge and what was included within direct expenditure. Such a spreadsheet would be welcome this year too. We of course note that figures for last year are included in the accounts that have been provided.

25. A spreadsheet containing income and expenditure forecasts for the next three years accompanies this application.

I. The annex to the consultation includes a forecast for PCF certificates to be issued in the coming years. An explanation of how such a forecast has been arrived at should be included in the application. The forecast should, where possible, include an explanation of how external factors (such as the COVID-19 pandemic) have been considered.

26. The number of practising certificates issued over the past few years has been broadly static with the numbers of new admissions keeping pace with those who retire, take parental/sabbatical leave or, sadly, die. In 2020, 41 applicants successfully passed the notarial practice course and many have now applied for admission and are practising. In 2021, 42 applicants were successful and a good number have already applied for admission and some are already now practising. Numbers on the course remain at around the same level as are the numbers of enquiries about joining the course; there is, therefore, good reason to believe that the numbers of new admissions will be maintained and may well exceed the number of retirements.

J. This section includes some explanation of the surplus of c.£125k against a budgeted surplus of c.£36k. The explanation accounts for a £38k shift in the management charge and a £14k increase in PCF income. It would also be useful to provide figures and to explain any other material variations in what was budgeted against what actually happened. For example some of the changed working practices as a result of COVID-19 could be detailed – such as the reduction in printing costs (£2,309) and travel (£7,500). It would also be particularly useful for an explanation to be provided around the £27,440 reduction in spending on inspection/entity regulation.

27. We have added further detail at paragraphs 49-51 in Section III.

Consultation

K. We look forward to the inclusion of content relating to the consultation in the formal application.

28. This is now included at Section V.

Equality Impact Assessment

L. We are pleased to see the initial equality impact assessment included. We have a couple of points for your consideration:

- o has the FO considered how much mitigation is provided to someone who takes parental leave by the fact the PCF is based on turnover given that almost 50% of its regulated community are already in the lowest band. Some other regulators have taken action to implement fee reductions or fee dispensations in circumstances where individuals have been on parental leave during part of a practising year.
- o the 'religion or belief' section would benefit from a comparison with the overall population. For example, the EIA asserts that there is no evidence that members of non-Christian faith groups are put off becoming notaries, but there is no indication on whether the make-up of the notary profession aligns with wider society. There is such a comparison

in the sexual orientation section, for example.

29. Thank you. We have added further detail to the EIA.

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 activity 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.

30. The FO, as a smaller regulator, operates with a small staff (a full time equivalent of 5.5) all of whom work across the full ambit of our regulatory function. All, except the Deputy Chief Clerk, also work on the FO's ecclesiastical and other dispensatory functions as well as within the Ecclesiastical Education and Charities Division of Lee Bolton Monier-Williams LLP (by whom all staff are jointly employed).

31. The income derived from the PCF is used solely for regulatory functions for the permitted purposes. The LSB levy accounts for 3.6% of the PCF income with the OLC and OPBAS levies accounting for 1.1% each. The majority (in excess of 90%) is attributable to the first of the permitted purposes (the regulation, accreditation, educating and training of relevant authorised persons and those wishing to become such persons) with the balance split between the third (participation by the AR in law reform and the legislative process) and sixth (the promotion of relations between the AR and relevant national or international bodies, governments or the legal professions of other jurisdictions).

32. Of the work falling within the first permitted purpose the main activities will be with an estimate of the percentage of PCF income attributable to each:

33. Regulation, accreditation and authorisation of notaries, the education and training of notaries and those wishing to become notaries [25%]. This remains one of the primary activities and makes up a significant element of the work undertaken by the Chief Clerk and Deputy Chief Clerk over a three to four week period leading up to and immediately after the annual practising certificate renewal on 1st November in each year. Every application is checked to ensure, inter alia, that the notary has the relevant insurances in

place, has completed the required annual CPE requirements and has responded appropriately to other matters raised as part of the renewal process. There is similarly busy period across the Summer, following release of the results of the Notarial Practice Course by UCL, dealing with the administrative and accreditation aspects of the admission of new Notaries following approval of applications by the Master who personally reviews each application. Additionally, members of FO staff participate in CPE events, the UCL open day for potential notaries and provide advice and guidance to those wishing to train to become notaries. This also includes the time spent on the formulation of policy, drafting new rules, responding to legislative changes, producing guidance etc.

34. Anti-Money Laundering supervisory activities as Professional Body Supervisor for the notarial profession including work on the action plan agreed with OPBAS and participation in the various Sector Affinity Groups and Information Sharing Working Groups, provision of advice, guidance and information dissemination to the profession [30%]. AML supervisory activity is an increasingly significant part of the work of the FO and this increase was the principal reason for recruiting an additional member of staff with relevant experience and expertise as Deputy Chief Clerk (Risk and Compliance). Much of the work in this area is necessarily not public to avoid criminals accessing information on potential or perceived weaknesses in the UK's AML procedures. The FO's work in this area includes participation in and attendance at a number of inter-agency meetings and the preparation and provision of guidance to our supervised community.
35. Continued work on the Regulatory Standards action plan including a focus on Equality, Diversity and Inclusion, Consumer Engagement and work streams arising from the Well-led Review of the FO [25%]. Equality, Diversity and Inclusion has been identified as one of the Master's key themes for both the FO itself and for its work to ensure, so far as possible, that the notarial profession represents the community which it serves. This will involve renewed participation in the Regulators EDI Forum, further analysis of the diversity data collected from the profession to identify areas where work might be needed including work to mitigate barriers to entry for those with protected characteristics. We will be launching a consumer survey which is in the course of development and which we are taking time to get right including looking at ways of phrasing questions and seeking maximum engagement within the means at our disposal; we are reviewing other regulators published survey results to gain insights on what worked well and pitfalls to seek to avoid. Whilst the LSB's draft report on its well-led review of the FO is not yet published, the FO is developing an action plan to be agreed with the LSB to guide its programme of developments and improvements to address the report's findings. The detail is still being worked on but the overarching initiative across all the proposed actions which will impact all the well-led standards is the creation of a new governance manual designed to establish a consistent, transparent and coherent way for how, when and by whom key governance elements will be delivered and overseen; to ensure that good governance processes are embedded across the FO; and ensure the application of all good governance elements to a consistently high standard across the FO.
36. Engagement with the Ongoing Competence and Quality Indicators work streams [5%]. This element will largely, in the first instance, involve engaging with the LSB and the other

AR's as the LSB develops its work in these areas including participation in roundtables and responding to direct requests and/or wider consultations.

37. Participation in and funding contribution to the Legal Choices website, including chairing and provision of administrative support to the Governance Board [5%]. The Registrar currently chairs the Legal Choices Governance Board and the FO provides administrative support to him in this role. In addition, the Chief Clerk is a member of the Legal Choices Steering Group and acts as first point of contact for the FO and liaison with those providing content for the site.

38. Maintaining the ongoing inspection, enforcement and disciplinary work of the FO [10%]. This is another key area for the FO. The annual inspection regime for notarial practises forms a cornerstone of our monitoring activity. We take a risk based approach to identifying those practises to be inspected and in identifying, in conjunction with the Master, any follow-up required and/or enforcement action that may be necessary. The disciplinary work of the FO involves an initial assessment of any complaint to identify whether there is, or may be, an allegation of notarial misconduct which requires investigation by a Nominated Notary pursuant to the Notaries (Conduct & Discipline) Rules and providing an administrative function within the Court of Faculties for complaints which proceed to a disciplinary hearing, including to the Commissary and Assessors.

- 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

39. Not applicable.

- 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).

40. The regulatory objectives are—

- (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 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 –
 - (i) that authorised persons should act with independence and integrity,
 - (ii) that authorised persons should maintain proper standards of work,

- (iii) that authorised persons should act in the best interests of their clients,
- (iv) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (v) that the affairs of clients should be kept confidential.

41. The work streams outlined above as falling within the permitted purposes to be funded by the PCF fit squarely within the regulatory objectives and, specifically:
42. Accreditation and authorisation of notaries, the education and training of notaries and those wishing to become notaries (regulatory objectives (a), (c), (d), (e), (f) and (h))
43. Anti-Money Laundering supervisory activities as Professional Body Supervisor for the notarial profession including work on the action plan agreed with OPBAS and participation in the various Sector Affinity Groups and Information Sharing Working Groups, provision of advice, guidance and information dissemination to the profession (regulatory objectives (b) & (h))
44. Continued work on the Regulatory Standards action plan including a focus on Equality, Diversity and Inclusion, Consumer Engagement and work streams arising from the Well-led Review of the FO (regulatory objectives (a), (d), (e) & (f))
45. Engagement with the Ongoing Competence and Quality Indicators work streams (regulatory objectives (a), (d), (e), (f) & (h))
46. Participation in and funding contribution to the Legal Choices website, including chairing and provision of administrative support to the Governance Board (regulatory objectives (c), (e) & (g))
47. Maintaining the inspection, enforcement and disciplinary work of the FO (regulatory objective (a), (b), (d) & (h)).

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.

48. One of the previous Master's priorities, the incorporation of the Faculty Office, was achieved (registered at Companies House under company no. 12221896) during the financial year 2020/21. The Director's Report and Financial Statements for the year ended 31 March 2021 are included. The regulatory arm of the FO made an operating surplus of £125,790 (against a budgeted surplus of £36,645) which has more than halved the historic deficit identified in 2016 when the FO changed its accounting policy from a cash basis to an accruals basis. The deficit now stands at £117,206.

49. We include a comparison of actual and budgeted income and expenditure for the 2020/21 financial year. The principal reason for the greater than budgeted surplus is that cost savings were made possible due to changes in working practices arising from the pandemic, including the use of the Furlough Scheme, and an increased workload in the ecclesiastical arm, in particular, a significant increase in the number of emergency (deathbed) marriage applications (up from an average of 45 in each of the previous 10 years to 176 in 2020/21) as a result of the effective withdrawal of the civil marriage equivalent procedure. This resulted in a significant percentage shift in the allocation of the management charge as between the two arms of the FO's operation (a 'saving' of some £38k against the budget). There were also savings arising from the pandemic (travel and other expenses).

50. The PCF income was also greater than budgeted (by some £14k) due primarily to

movement between bands. A number of smaller, but together, significant savings were made as a result of the pandemic – printing costs were down by £2,309 as a result of greater use of electronic communications; none of the £7,500 travel and entertaining budget was used due to pandemic restrictions; and board expenses were down against the budgeted expenditure by £3,111 as a result of meetings being moved online.

51. The other significant saving (£27,440) was against the budget for inspections and entity regulation work; fewer onsite inspections were possible as a result of lockdowns and most of the inspections which did take place were undertaken virtually resulting in a reduction in travel and accommodation expenses. The entity regulation project remains in progress but the MoJ have not been able to take further their consideration of the draft S.69 Order due to lockdowns and Brexit related priorities resulting in the consultant engaged by the FO to assist in the project not being required to undertake work for which budget allowance had been made.
52. We also include budget forecasts for the financial years ending 31st March 2022, 2023 and 2024 together with a spreadsheet setting out more detailed Income and Expenditure forecasts.
53. The accounting year for the Faculty Office and the PCF year are not the same. PCF income is spread across two accounting years and the budgets are expected to produce a surplus for the accounting year ending 31 March 2022 of £75k, £64.5k in 2023 and £75.5k in 2024. This would provide a projected reserve by 31 March 2024 of £97,494.
54. The budget setting process - The budgets are initially produced for the Registrar by the Faculty Office's Finance Officer. These are then discussed internally at one or more of the Faculty Office monthly meetings with the Master and by the Master's Audit Committee after which any amendments are agreed and signed off.
55. In addition to the wider consultation of the profession, the budgets are shared with the two Societies at an annual meeting in July where attendees have the chance to discuss the budget and ask questions of the Registrar and Chief Clerk.
56. Great care is taken to ensure that the budgets are accurate each year and include sufficient provision to enable the work of the office to be carried out well and efficiently and to meet the Faculty Office's obligations to the notarial profession, the public, the LSB, OLC and OPBAS etc. The Faculty Office's Finance Officer has undertaken this task for over 30 years.
57. Notwithstanding the significant reduction in the historic deficit, the Master shares the concerns expressed by the LSB that a reserves target ought to be achievable within a strategic cycle not exceeding five years. The FO is therefore proposing an additional levy to be collected alongside the annual PCF over the next two years as set out above in table 1. This would provide an additional £72,560 per year meaning that the reserve would reach £167,114 by the 31 March 2023 and £242,614 by 31 March 2024 which is equivalent to six months operating costs as set out in the Operating Reserve Policy (see below).

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.

58. We include a copy of the FO Operating Reserves Policy. As indicated above, the historic deficit was halved in the year ending 31 March 2021 and the proposed fee for which we are seeking approval will clear the deficit by 31 March 2022 and build up to the intended level of 6 months operating reserve by 31 March 2024 for the regulatory arm of the FO. Funds collected from the regulatory arm are maintained in a separate bank account from those held in the ecclesiastical arm.

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 PCF. 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.

59. The Faculty Office consulted with the profession in relation to the proposals. An email was sent to every practising notary on 14th July attaching a copy of the consultation document which was also available on the Consultation pages of the Faculty Office website from 19th July. The consultation closed on 13th August. We have published a response to the consultation on our website and a copy is provided with this application.
60. Whilst the FO proposals were to maintain the current practising certificate fees and bands for the practising certificate year 2021/22 and not to charge a contingency fund contribution, we also indicated our intention to charge an additional levy to recover the accrued notarial deficit and build a reserve. The proposal did not, however, result in the level of interest that might have been anticipated and elicited just 49 responses from a profession of 725 – a response rate of 6.75% which is disappointing. We do however appreciate that notaries will be busy professionally, or away from their work, and it may be that a majority would have no strong feelings about a fee proposal which is largely unchanged on the previous year.
61. The FO was encouraged at the level of support for the overall proposal with 75.5% of respondents in agreement, 16.3% not agreeing and 8.2% either not answering the question or expressing no opinion either way.
62. Aware that the past year has had unique and unprecedented challenges arising from the Coronavirus Pandemic, the FO also asked for notaries' best estimate of any likely percentage change in turnover, caused by Covid-19 in their financial year. Whilst the responses varied widely, 28.6% of respondents indicated that turnover had actually increased whilst 30.6% had experienced a reduction; a further 20.4% expected no, or minimal, variation and 20.4% did not, or were not able to, answer the question. On average a 7% reduction in turnover was reported.
63. We also asked respondents to let us know whether they thought that our proposals would adversely impact equality, diversity or inclusion within the notarial profession. 14.3% indicated that they would or might have an impact, 67.3% believed there would be no impact and 18.4% expressed no view.
64. Given the overwhelming support for the overall proposal, albeit from a disappointingly low number of respondents, the FO believes that the table of proposed fees does represent the most acceptable solution to maintaining our ability to effectively regulate the profession whilst at the same time securing the financial stability and resilience of the regulatory arm of our operation.
65. Whilst any increase in fees is unwelcome, the FO is aware that the past 18 months have been particularly challenging for some notaries whilst others have found innovative ways to continue to build their practices. Clearly, we would not choose to impose an increase at a time when some have seen a significant reduction in turnover but this must be balanced against the need to ensure that the FO is equipped to regulate the profession for the ultimate protection of the consumers of notarial services. We will continue to ensure, so far as it is within our gift, that our regulatory regime and, therefore, the costs of regulation are proportionate within the bounds of what is required by oversight bodies.

66. The comments about the bands will certainly feed into the wider review of the bands to which we are committed following the third year of their operation in the 2021/22 practising certificate year. Without wishing to pre-judge the outcome of that review, the case made for an additional band at around the £80/£85k level appears to be strong and, on the face of it, likely to receive strong support. £85K is the current threshold for VAT registration and may have something of a totemic significance for notaries. At the outset of the banding system we were seeking to create a system that spread the cost of regulation more equitably without creating too many bands which would make the system difficult to operate.
67. It is worth repeating the definition of notarial turnover for the purpose of charging a practising certificate fee as some notaries have expressed uncertainty " all the fee income of the notarial practice (and whether or not notarial services) but excluding VAT and excluding disbursements and before deduction of expenses."
68. The Faculty Office definition of turnover is therefore notarial fee income exclusive of disbursements and expenses. By way of clarification, and as a matter of policy, income from the Government's Covid-19 Self-Employment Income Support Scheme will be treated as ordinary fee income for the purpose of ascertaining the correct practising certificate fee.
69. Although the Contingency Fund stands at a little over the target level of £150k, there are clearly some who believe that it would be prudent to continue to add to this fund at a low annual contribution in order to avoid possible future significant variable levies to refresh the fund in the event of an unexpected significant call on it.
70. In the light of comments made by respondents to the consultation, the FO has revised the initial equality impact assessment which is required to be submitted to the Legal Services Board as part of the application for PCF approval. Whilst we do not believe that age is, ordinarily, a characteristic that would be adversely impacted by an annual practising certificate fee, in the current circumstances, emerging from a pandemic where older people (and particularly those with other underlying health conditions) have been more at risk and have been required to shield or take significant additional precautions, it may well be that older people might be adversely affected, although much less so than they would have been prior to the introduction of a turnover based system of fees rather than a single flat rate for all notaries regardless of their turnover.
71. We also continue to hold that the banding system allows the expense of regulation to be shared in a more equitable way which can help shield those notaries whose fee income is low from the highest burden. That is designed to help those notaries, for example, who are in rural areas whose work may be more occasional or less lucrative but who still provide an important service to their local community. We recognise that both practising fee levels and regulatory requirements can precipitate the retirement of such notaries and we are engaged in a balancing act between trying to set a fee which is proportionate while being realistic to achieve the aim of regulating all notaries robustly. Still, for those in the lowest band, the £75 levy is as noted by one commentator "less than what most of us

charge for one notarial act.”

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.

72. The level of practising fee proposed has the potential to disadvantage those with a disability or health condition that limits their ability to work full-time or those taking time out due to pregnancy or maternity/paternity leave. In addition, a greater proportion of notaries identifying as female are the primary carer for a child/children which may similarly impact on their ability to work full time and, thereby, reduce their earning capacity. In light of the responses received to our consultation, we also acknowledge that those (primarily younger) members of the profession who are building up their practices and those (primarily older) members of the profession may have been more significantly affected by limitations on their earning capacity due to Covid-19 related factors such as a requirement to shield either for their own benefit or to protect vulnerable members of their households.

73. These are, however, mitigated to some extent by the differential fee based on turnover rather than imposing a flat-rate fee across the profession regardless of turnover as was the case until the 2019-20 practising certificate year. Even taking into account the addition of the levy payment, those in the lowest band are still paying less than they were in the last practising certificate year in which a flat-rate fee was charged (in 2018/19 the PCF was £560).

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

74. The level of the PCF is set out in the consultation document which was emailed to every practising notary. This includes details of the work that will be undertaken. None of the PCF fee is used for non-regulatory purposes as the FO does not have any representative function.

75. The consultation also identified the proportion of the PCF income attributable to the LSB and OLC levies (and the OPBAS levy).

76. As a result of the consultation responses, we will provide further guidance on how we define turnover and what is, and is not, included. We will also give further detail as to how the deficit was identified as a result in the change of accounting policy.

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).	<input type="checkbox"/> Enclosed

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

- FO Full Company Accounts for the year ending 31 March 2021 (not for publication please)
- FO Regulatory (Notaries) Accounts for the y/e 31 March 2021 (for publication)
- Contingency Fund Account for y/e 31 March 2021
- Comparison of actual and budgeted income and expenditure for the y/e 31 March 2021
- FO Operating Reserves Policy
- FO Budgets for the y/e 31 March 2022/23/24
- Detailed Income and Expenditure forecasts for the y/e 31 March 2022/23/24
- FO PCF Consultation Response (incorporating the Consultation Document)

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.



H J DELLAR
Registrar

1st September 2021

Please include contact name(s) for the application.

Enquiries should be sent to:

Neil Turpin
Chief Clerk
The Faculty Office

Email: neil.turpin@1thesanctuary.com

Tel: 0207 960 7126

Equality Impact Assessment

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	Yes	Some 2.5% of the notarial profession indicated that they have a disability and 3.4% of the profession indicated that their day-to-day activities are affected to some extent due to disability or illness. However, as the practising certificate fee is in turnover based bands, there is no evidence to suggest that this group is disproportionately affected.	Although there may be a potential impact in terms of ability to work full-time, as our fee is based on turnover and is substantially lower for those with the lowest turnover, this mitigates the impact as compared to charging a flat-fee for all practitioners.
Gender reassignment	No	Whilst we consider the data collected in the recent diversity survey to be unreliable due to its significant divergence both from the national benchmark and in comparison to the other legal professions, there is no evidence to suggest that this group (whatever its size) is disproportionately affected.	Not applicable
Marriage or civil partnership	No	We have, in the 2017 and 2020 diversity surveys, collected data on marital status. However, as our fee is set based on turnover and marital status does not impact on ability to practise, there is no impact on notaries who are either single, married (or civil partnered), divorced or widowed.	Not applicable

Pregnancy and maternity	Yes	In 2020, 23.4% of the profession indicated that they were the primary carer for a child/children; this may impact on whether they are able to work full or part time. Similarly, a notary taking pregnancy and/or parental leave will have a reduced working period in the relevant year with a corresponding reduction in turnover upon which the practising certificate fee is based.	Although there may be a potential impact in terms of ability to work either full-time or for only part of a practising certificate year, as our fee is based on turnover and is substantially lower for those with the lowest turnover, this mitigates the potential impact as compared to charging a flat-fee for all practitioners.
Race	No	14.2 % of notaries identify as BAME compared with 12% of the UK workforce which indicates that there are no particular barriers to entry to the profession or remaining within it. and this would indicate that the practising certificate fee does not have an adverse impact on this characteristic. However, we are alert to the possibility that this statistic could mask disadvantages to particular minority groups within the overall BAME community but any disadvantage to particular minority groups that might impact a notary's turnover would be mitigated by the use of the scaled fee system.	Not applicable
Religion or belief	No	Despite being appointed on behalf, and in the name, of the Archbishop of Canterbury, only 54.7% of notaries profess a Christian faith. 1.6% are Jewish, 1.6% Muslim, 0.3% Buddhist, 2.7% Hindu, 4.1%	Not applicable

		<p>Sikh, 1% follow other faiths and 17.6% profess no religion or belief. These figures are not significantly divergent from the wider population in England & Wales (52% Christian, 1% Jewish, 6% Muslim, 0% Buddhist, 2% Hindu, 1% Sikh, 2% other faiths and 38% no religion) and there is, therefore, no indication that members of non-Christian faith groups, or those of no faith are put off becoming notaries due to the historic connection with the Christian Church, nor that membership of other (or no) faith groups has a differential impact on the ability to pay the practising certificate fee.</p>	
Sexual orientation	No	<p>2.4% of notaries identify as lesbian, gay or bi-sexual compared to 2.3% of the UK population which indicates that the LGB community are not put off qualifying as notaries. There is also no evidence that a practising certificate fee based on turnover adversely impacts this group.</p>	Not applicable
Sex (gender)	Yes	<p>38.8% of notaries identifying as female indicated that they were the primary carer for a child/children compared to just 17.1% of notaries identifying as male. As indicated under 'Pregnancy and maternity' above, this may impact on whether a notary is able to work full-time and, therefore, on their potential turnover. However, as the practising fee is based on turnover, with those with a</p>	<p>Although there may be a potential impact in terms of ability to work either full-time or for only part of a practising certificate year, as our fee is based on turnover and is substantially lower for those with the lowest turnover, this mitigates the</p>

		lower turnover paying less than those with higher turnovers, the proposed fee mitigates against any impact on the basis of gender.	potential impact as compared to charging a flat-fee for all practitioners.
Age	Yes	The nature of notarial work does mean that practitioners are able, if they wish, to continue to practise after they might normally look to retire, or indeed have retired as (mostly) solicitors, and some 25% of the notarial profession are aged 65+. In normal times, there is no evidence to suggest that a practising certificate fee based on turnover rather than a flat rate has any adverse impact based on the age of the notary. However, the Covid-19 pandemic may have caused some, primarily older, members of the profession to have a reduced working capacity due to a requirement to shield to protect themselves or vulnerable members of their households with those over normal retirement age unable to benefit from the Government's Covid-19 Self-Employment Income Support Scheme.	Although there may be a potential impact as a result of Covid-19 related restrictions (largely affecting older people), as our fee is based on turnover and is substantially lower for those with the lowest turnover, this mitigates the potential impact as compared to charging a flat-fee for all practitioners. In addition, some practitioners will have been able to benefit from Government Income Support Schemes for the self-employed.

Evaluation

Question	Explanation / justification
Is it possible that the proposed level of PCF could discriminate or unfairly disadvantage	As identified above, the level of practising fee proposed has the potential to disadvantage those with a disability or health condition that limits their ability to work or those taking time out due to pregnancy or maternity/paternity leave or Covid-19 related issues for, primarily older people. In addition, a greater proportion of notaries identifying as female are the primary

members of the regulated community?	carer for a child/children which may similarly impact on their ability to work and, thereby, reduce their earning capacity. However, this is mitigated by the differential fee based on turnover rather than imposing a flat-rate fee across the profession regardless of turnover.	
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	✓	The fee is based on turnover so that those with a lower turnover pay a lower fee which, if not wholly eliminating bias, significantly mitigates against it. Even taking into account the addition of the levy payment, those in the lowest band are still paying less than they were in the last practising certificate year in which a flat-rate fee was charged (in 2018/19 the PCF was £560).
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.		