5 October 2021

Approval of 2021/22 Practising Certificate Fee (PCF) application made by the Faculty Office to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

1. The LSB has approved an application made by the Faculty Office to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.

2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act and the Practising Fee Rules 2021 (Rules)[1].

3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. In this case, this power is vested in an individual, the Master, who is the Approved Regulator for notaries. The Master, Morag Ellis QC, delegates the regulatory functions to the Faculty Office. As such, the Faculty Office is the regulatory body making the application for PCF approval.

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

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

Summary and overview of PCF application and decision

6. The Faculty Office has referred in its application to two sums – a Practising Certificate Fee (PCF) and a "Deficit/Reserve Levy contribution (for two years)". However, where payment of both sums is a condition of practice, the PCF for the purposes of this application constitutes the total of both sums.

7. The Faculty Office has proposed increasing the total PCF income to clear its deficit this PCF year and build its target reserves by 2024. The cost of this increase will be distributed across five turnover-based bands (see table below), the levels of which will remain the same as in 2020/21. This increase will mean three changes in practice: at

each band, notaries will pay a higher PCF than in 2020/21; there will be different increments between the amounts paid by each turnover band as compared to 2020/21; and the percentage of turnover paid by each turnover band in PCF will be different from 2020/21.

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

8. The Faculty Office's projected total PCF income for 2021/22 is £469,199 (a decrease from £470,777 in 2020/21), based on an accrued income gathered between April-October 2021 of £274,657 and £194,542 between November 2021 and March 2022. These figures assume 725 individuals paying an average PCF of £268.33 in 2021/22. The Faculty Office has explained that this assumption is made on the fact that the number of practicing notaries is predicted to remain broadly static.

9. The LSB's decision is to approve the Faculty Office's application to increase its PCF. In doing so, we note that the FO has provided a more comprehensive and transparent application than previously and has particularly improved its consultation and provision of financial information. We have also identified several areas for further improvement in future applications, which are recorded at the end of this decision notice.

LSB assessment

Allocation of practising fee to permitted purposes

10. The Faculty Office set its budget independently where it was produced by the Registrar and then approved solely by the Faculty Office Advisory Board and the Master.

11. However, we consider that this process could be improved in its next PCF application. The Faculty Office says in its application that it shared its draft budget for discussion with the two notarial societies – the Notaries Society and the Society of Scrivener Notaries – prior to public consultation. Although these societies do not constitute Approved Regulators under the Act, the LSB's view is that to all intents and purposes, they constitute representative bodies. As such, consulting these societies in this manner could give the impression that the budget setting process was not independent. To avoid any such impression, we ask that in the future, the Faculty Office consult with the societies in a more transparent manner – ideally as part of the public consultation period with a public record of the discussion and any changes made in response.

12. We are satisfied that the Faculty Office has complied with the two guiding principles in setting the PCF for its regulatory functions, that is, that the PCF must be allocated

solely for permitted purposes set out in section 51 of the Act and the Rules, and that it will discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.

13. The Faculty Office sets out that 95.3% (£447,146.65) of the total amount of PCF for 2021/22 (£469,199) will be allocated to its regulatory function, while 3.6% (£16,891.16) will be used to fund the LSB. The Office for Legal Complaints and Office for Professional Body Anti-Money Laundering Supervision will receive 1.1% each (£5,051.19 each).

14. The Faculty Offices sets out that the PCF income to be allocated to resource its regulatory function will be apportioned as follows:

    - 25% towards regulation, accreditation and authorisation of notaries and education and training.
    - 30% towards anti-money laundering supervisory activities and continued work on the regulatory standards action plan including a focus on equality diversity and inclusion,
    - 25% towards consumer empowerment and work streams arising from the LSB's review of the Well-led standard.
    - 5% engaging with the LSB's ongoing competence and quality indicators projects,
    - 5% participating and funding the Legal Choices website including chairing and providing secretarial support to the Legal Choices Governance Board
    - 10% to maintain its ongoing inspection, enforcement and disciplinary work.

15. The Faculty Office explained the benefits of its planned activities in paragraphs 33 to 38 of its application, and it sets out how these activities fall within at least one of the Permitted Purposes in paragraphs 42 and 47. The Faculty Office explained that it would assess the effectiveness of its planned activities (which it noted were core regulatory activities) via ongoing Key Performance Indicators and LSB oversight.

16. With regards to the transparency of its regulatory fees in future years, there are a number of areas where we consider that the Faculty Office could improve. Firstly, this year the Faculty Office did not publish any kind of strategy or business plan, as it generally does each January in its annual "Masters Priorities" documents. For next year's application, we will expect to see a programme of activities based on these annual priorities. Furthermore, although the Faculty Office sets out how it will allocate the PCF income, next year's application would benefit from additional transparency over the allocation of time to each activity, which is particularly relevant given the fact that the Faculty Office's staff split their time between Ecclesiastical activities (which the LSB does not oversee) and employment in the charities division of the solicitors firm Lee Bolton Monier Williams. This will improve the overall transparency of the allocation of resources.

17. Finally, to support greater accountability, and in line with the expectations set out in our rules, in next year's application we will expect a greater explanation of how the Faculty Office plans to measure and evaluate its activities, including its ongoing regulatory work.

Budget for 2021/22 and financial information

18. Noting the concerns at paragraphs 16 and 17, we are satisfied that the application provides adequate transparency as to the allocation of the Faculty Office's resources

and enables the LSB to be confident that the Faculty Office has adequately planned its financial position for the forthcoming financial year.

19. The draft budget takes into account the programme of activities as set out above, as well as predictions of other operating costs, predicted income, deficit reduction and future accumulation of reserves.

20. The Faculty Office has provided the income and expenditure for the previous financial year. Where there was a significant surplus against the expected balance, the Faculty Office explained that this was largely due to changes made in working practices as a result of the Covid-19 pandemic.

21. Looking forward to areas for improvement in future applications, the LSB considers it would build confidence in the Faculty Office's accounts if they were to be externally audited for next year's application, although we accept that this is not necessary under S.444 Companies Act 2006.

Reserves and financial resilience

22. In our assessment of the Faculty Office's PCF 2020 application[1], the LSB set an expectation that the Faculty Office produce a documented reserves policy. The policy provided by the Faculty Office in its application meets this expectation by explaining its historic deficit was halved in the financial year ending 31 March 2021, and the proposed PCF would clear the remaining deficit by 31 March 2022 and build up to the intended level of 6 months of operating reserves by 31 March 2024. Furthermore, the policy sets out the purposes of the reserve, when and who can access it and for what means, and how it should be built up.

Consultation and engagement

23. The consultation process was sufficient for the Faculty Office to demonstrate meaningful engagement with its regulated community. Although in its application the Faculty Office set out that it considered the level of responses to its consultation "disappointing", we considered that receiving 49 responses from a profession of 725 was encouraging. Furthermore, the consultation response document set out details of the responses received and how these were considered. The consultation document was clear and accessible and the window for responses was adequate.

24. However, the Faculty Office could improve the consultation process in next year's application by setting out more clearly in the consultation document what it proposes to do with the PCF monies collected. There was scarce reference to the specifics of any workstreams or projects beyond the day-to-day regulating of the profession and little detail as to how the success of the Faculty Office's work would be assessed. Furthermore, in the interests of transparency it would be good practice to publish all the responses received in full.

Impact assessments

Equality Impact assessment

25. We consider that the application provides meaningful consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession. The Faculty Office has

[1] 2020 PCF decision notice

considered how its turnover-based banding structure may affect different protected characteristics – including in light of the Covid-19 pandemic – and concludes that to some extent the turnover-bands will mitigate any potential negative impacts.

Regulatory Impact assessment

26. In addition to the points set out above, the Faculty Office was able to demonstrate its consideration of the regulatory impact of its proposed PCF, in particular the impact of those affected by the Covid-19 pandemic. It explained that it was confident that those impacted financially by the pandemic would be accommodated by the turnover-based banding structures.

Decision

27. The LSB has approved the PCF application submitted by the Faculty Office for 2021/22 under section 51 of the Act.

Summary of expectations for next application

- Ensure that if the Notaries Society or Society of Scrivener Notaries are consulted on the Faculty Office's budget, this is carried out in a transparent manner.
- Publish a strategy or business plan each year which will form the basis of the activities set out in the PCF application.
- Be more transparent in terms of the resource allocation by time spent on regulatory activities.
- Provide a more fulsome explanation of how the Faculty Office plans to measure and evaluate its activities, including its ongoing regulatory work.
- Consider commissioning an external audit of its accounts.
- Consider further improvements to transparency of its consultation, including providing further detail on proposed work and publishing consultation responses received.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
5 October 2021