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 2022 to 31 OCTOBER 2023

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).

1. The Faculty Office (FO) (on behalf of the Master of the Faculties) is proposing only a minimal change to the current practising certificate fees and bands for the practising certificate year 2022/23. The contingency fund maintains a healthy balance (£165,500) and for the third year running we will not be seeking any contribution to this fund. However, in the practising certificate year 2021/22 we introduced (and had approved) a levy to be collected over two years to recover the historic deficit and build a reserve within a much shorter period than had been the plan. The proposed levy varied across the turnover bands as set out in the table below. The year 1 collection has cleared the historic deficit and the reserve stood at £90,072 as at 31 March 2022. It is anticipated that the year 2 collection will enable the FO to reach its intended reserve level of six months operating costs by 31 March 2024. The one change that we are proposing follows both from comments made in response to the consultation for the year 2021/22 and our commitment to review the band structure after three years of operation. We are proposing to introduce an additional band by splitting the original band three (£50,000 - £150,000) into two with a split at £90,000 (ie £50,001 - £90,000 and £90,001 - £150,000). This will result in a reduction in the total PCF payable for those with turnovers up to £90,000 of £205 and a small increase for those in the new turnover band £90,001 to £150,000 of £75 as set out in Table 1. The proposals will see no change for 85.3% of the profession (based on the 2021/22 split between the bands) with 11% seeing their PCF reduced by £205 and 3.7% seeing an increase of £75. We made a policy decision to

maintain the full amount of the levy charge of £135 for both new bands created out of the original band 3 as it seemed to us to be equitable to do so given that the levy was introduced last year and was intended to be collected over two years.

Table 1

Turnover	Practising Certificate Fee	Deficit/Reserve Levy contribution (year 2 of 2)	Contingency Fund contribution	Total	
Up to £15,000	£470	£75	£0	£545	No change
Up to £50,000	£580	£85	£0	£665	No change
Up to £90,000	£615	£135*	£0	£750	£205 Reduction
Up to £150,000	£895	£135*	£0	£1,030	£75 Increase
Up to £300,000	£1,020	£250	£0	£1,270	No change
Over £300,000	£2,270	£300	£0	£2,570	No change

*this is the level of the levy applied to the entire turnover band £50k-£150k in year 1 and we are proposing to maintain the levy contribution for both new bands

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 2022. 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 six specific expectations to be addressed in this 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.

5. The representative bodies were given the opportunity to comment on the FO budget, business plan and PCF fee as part of the wider public consultation rather than in a discrete meeting with the councils of those bodies as has been the case in previous years at which the annual accounts and budgets have been presented. A copy of the consultation document and the FO response accompanies this application with additional information set out in Section V.

- Publish a strategy or business plan each year which will form the basis of the activities set out in the PCF application.

6. The FO published and consulted on a draft Business Plan/Master's Priorities document as set out in paragraph 5 above.

- Be more transparent in terms of the resource allocation by time spent on regulatory activities.

7. The staff of the FO work across the full ambit of the responsibilities we have across the regulatory, ecclesiastical and other dispensatory activities (with the exception of the Deputy Chief Clerk who works 3 days a week and is solely focussed on regulatory activities) as well as being involved with the Ecclesiastical Education and Charities department of Lee Bolton Monier-Williams LLP by whom all staff are employed and of which the Registrar and Deputy Registrar are partners. The total full-time equivalent staff time spent on regulatory activities in the financial year ending 31 March 2022 was 2.9 as set out in the Core Metrics document enclosed with this application. However, this does vary year on year depending on the volume of work stemming from each work stream. In terms of the regulatory activities we have attempted to provide an approximation for a percentage of the time which we anticipate will be required against the main aspects of our work program.

- Provide a more fulsome explanation of how the Faculty Office plans to measure and evaluate its activities, including its ongoing regulatory work.

8. We have set out in the Business Plan how we intend to monitor progress against the priorities set out including the setting of a delivery action plan to be reviewed at least quarterly by the Master's Council Meeting and the provision of an annual progress report.

- Consider commissioning an external audit of its accounts.

9. The FO commissioned a full external audit of its accounts and activities. A copy of the audited accounts accompanies this application. We also enclose (NOT FOR PUBLICATION) a copy of the Audit Findings Report prepared by Haysmacintyre LLP which is intended for internal use only but which we are sharing with the LSB for information.

- Consider further improvements to transparency of its consultation, including providing further detail on proposed work and publishing consultation responses received.

10. The FO consulted on its proposed business plan/Master's priorities alongside the PCF consultation which was emailed to all practising notaries and other stakeholders. The FO response includes copies of the full text of all consultation responses received.

- 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.

11. We had intended to provide this application in draft for informal engagement again this year as the process was most helpful last year. Unfortunately, a number of factors have conspired together to make that impracticable this year such that the timescale for lodging a draft, receiving feedback and lodging a full application in time for approval by the launch of the annual PC renewal round in the first week of October became too tight. We hope, however, that this substantive application adequately addresses the points made by the

LSB in previous years and represents a clear and transparent application for this year's (largely unchanged) PCF.

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.

12. The FO, as a smaller regulator, operates with a small staff (a full time equivalent of 5.5 across the organisation and 2.9 full time equivalent focussed in the regulatory arm) 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). All staff therefore have to be both pro-active in pursing 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 (as well as our other responsibilities) to enable accurate accounting between the regulatory and ecclesiastical arms, this is not broken down in specific detail as between the discrete areas within each arm of our operation.

13. The income derived from the PCF is used solely for regulatory functions for the permitted purposes. The LSB levy accounts for 3.4% of the PCF income with the OLC levy accounting for 1% and OPBAS levy accounting for 1.5% (all percentages are from the PCF income net of the levy which is directed to deficit reduction/building reserves). 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).

14. Of the work falling within the first permitted purpose the main activities will be with an estimate of the percentage of PCF income attributable and the principal regulatory objective(s) each meet:

15. Regulation, accreditation and authorisation of notaries, the education and training of notaries and those wishing to become notaries [accounting for some 15% of the total time spent – although some of the administration cost is off-set by a separate appointment fee payable by new applicants]. 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. Regulatory objectives (a), (c), (d), (e), (f) and (h).

16. 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 [accounting for approximately 20%]. 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. Regulatory objectives (b) & (h).

17. Other key areas of ongoing regulatory work funded through the PCF include maintaining the ongoing inspection, enforcement and disciplinary work of the FO also accounting for some 20% of resources in terms of time spent, although this will vary depending on the number and complexity of disciplinary cases in particular. The annual inspection regime for notarial practises forms a cornerstone of our monitoring activity. We take a riskbased 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. Regulatory objectives (a), (b), (d) & (h).

18. The FO Business Plan sets out the Master's Priorities for the next triennium and a copy is included with the documents lodged as part of this application. We have set out 11 priorities falling broadly within six of the eight Regulatory Objectives although most will cross over more than one of the Objectives. As set out in the Master's foreword, these 11 specific priorities both form part of, and enhance, our core regulatory activities and the discrete projects do not have any specific ring-fenced itemised budgetary expenditure allocation (with the exception of the contribution to the expenses of the Legal Choices project which is currently £5,800 per annum or 1.2% of the total PCF income) but together will be funded through the PCF. Following the consultation, we are preparing a delivery action plan for publication.

19. Although expressed as a plan for the next triennium, it will of course be subject to necessary changes as factors identified in the Master's foreword alongside currently unexpected challenges come into play. The FO will formally review progress against the plan on an annual basis and annual assessment reports will be prepared and published. Progress will be kept under review by the Master's Quarterly Council Meeting. Further detail is included below.

20. The FO entity regulation project has been a priority for some years and we have been in discussions with the MoJ regarding a draft S.69 Order. Brexit and then Covid-19 have both affected progress but we have recently renewed our efforts to bring these discussions to a successful conclusion and a further meeting with the current relevant team within the MoJ has been set up for mid-September. Once we have the necessary Order in place, the implementation of the project will require significant resource in terms of staff time and an assessment will be made as to whether this can be achieved within current staffing levels or whether additional resources will be required. Primary regulatory objective (d).

21. The FO does not currently have a set on minimum terms for PII cover but requires notaries to ensure that they hold adequate insurance for the work they are undertaking subject to a current minimum level of cover. The FO will be engaging with providers of PII cover to notaries and other stakeholders including other frontline regulators before launching a consultation on the introduction of a set of minimum terms to ensure that there is a consistency of protection for consumers of notarial services. Feedback from the Business Plan consultation regarding run-off cover and the requirement for Fidelity Insurance cover will also feed into this work stream. Primary regulatory objective (d).

22. A recent slight increase in the number of complaints with a disciplinary element has highlighted the need for a review of the process and particularly the way in which cases are prosecuted. As noted in the Business Plan, there will be an initial call for evidence which will lead into a wider discussion with the profession and other stakeholders to determine whether changes are needed and the extent and nature of such changes with a view to ensuring that the disciplinary process is as fair, consistent and effective as possible. Primary regulatory objectives (a) & (h).

23. We intend to modernise and consolidate into a single set of rules the existing Accounts Rules. The number of notaries holding client monies remains low and we do not believe that any significant amendments to the Rules are required but they were last formally updated some ten years ago. A draft consolidated rule has been prepared and a consultation will be conducted before finalising the new rules and lodging them for approval. Primary regulatory objectives (a) & (h).

24. The continued re-inforcement of the sanctions regime forms a main pillar of our supervisory role under the money laundering and terrorist financing provisions – see paragraph 16 above. Primary regulatory objectives (a) & (h).

25. We have outlined in previous applications (principally last year's) and in this current application our plans to repay the historic deficit and to build up reserves equivalent to six months' expenditure which we are on track to achieve within the timescale thanks in large part to the additional levy (which brought in an additional £75,640 in the financial year ending 31 March 2022) together with prudent budgeting and expenditure controls. Primary regulatory objectives (a) & (h).

26. Equality Diversity and Inclusion remains a key priority to ensure that the profession better reflects the community which it serves. Working with the representative bodies, in particular the Notaries Society which is launching a bursary scheme to assist applicants who might otherwise be unable to afford to qualify as a notary we will look at ways of widening and diversifying pathways into the profession whilst maintaining the calibre of applicants. There is also an education piece required within some quarters of the existing profession to modernise opinions and approaches in this area. Primary regulatory objective (e).

27. We intend to review the post-qualification supervision and training requirements for notaries practising in conveyancing and wills, probate and estate administration to ensure that an appropriate level of supervision and training is in place commensurate with any pre-qualification experience practising in these areas and taking into account ongoing competence requirements. Primary regulatory objective (e).

28. Wellbeing within the workplace generally has been brought more sharply into focus as a result of the pandemic and the legal professions, with others, have had to adapt to new ways of working; with high numbers of sole practitioner notaries working in isolation the potential risks of poor mental or physical health impacting on decision making, for example, cannot be ignored. It seems likely that health issues might have impacted on at least two recent disciplinary complaints. Whilst signposting to organisations such as LawCare will assist, as a responsible regulator with a pastoral as well as a professional outlook, there will be additional steps that we can take in this area including through the promotion of wellbeing through CPE. Primary regulatory objective (e).

29. The FO is committed to upholding the constitutional principle of the rule of law and to promoting the role of Notaries Public in this area. We are intending to hold a high-profile seminar to further explore the importance of the work undertaken by notaries in upholding the rule of law in 2023. Primary regulatory objective (b).

30. Participation in and funding contribution to the Legal Choices website, including chairing and provision of administrative support to the Governance Board. 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. This is one area where a specific financial commitment and outlay can be enumerated with 1.2% of our PCF income (£5,800) as a financial contribution to the costs of the project plus additional resources in terms of time and administrative support. Primary regulatory objectives (c) and (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

31. 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).

32. 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.

33. The work streams outlined in paragraphs 15 to 30 as falling within the permitted purposes to be funded by the PCF fit within the primary regulatory objectives set out at the end of each paragraph although, as noted, many will cut across more than one of the objectives.

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.

34. 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 2022 are included. The regulatory arm of the FO made an operating surplus of £207,279 (against a budgeted surplus of £147,249) which has now cleared the historic deficit identified in 2016 when the FO changed its accounting policy from a cash basis to an accruals basis. The accumulated operating reserve now stands at £90,072 (against a target of approximately £245,000, or six months', expenditure).

35. We include a comparison of actual and budgeted income and expenditure for the 2021/22 financial year. The principal reason for the greater than budgeted surplus is that total income was higher than budgeted for combined with cost savings made possible due to changes in working practices arising from the pandemic, including the continued use of remote meetings and a continuation in the increased workload in the ecclesiastical arm of the FO resulting 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 £15k against the budget). There were also disciplinary cost recoveries and significant underspends in

some areas which more than made up for overspends on IT and Audit/Accountancy fees, the latter due to the full audit of the FO accounts.

36. The PCF income was some £7k greater than budgeted due primarily to movement between bands. A number of smaller, but together, significant savings were made as a result of continued use of remote meetings only £1,200 of the £6,000 travel and entertaining budget was used due to pandemic restrictions; and board expenses were down against the budgeted expenditure by nearly £3,300 as a result of meetings being held online.

37. We also include budget forecasts for the financial years ending 31st March 2023, 2024 and 2025 together with a spreadsheet setting out more detailed Income and Expenditure forecasts.

38. As explained in previous years, 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 2023 of £137.6k (inclusive of the year 2 levy), £39k in 2024 and £36.7.5k in 2025. This would provide a projected operating reserve by 31 March 2025 of £303,515.

39. 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.

40. 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.

41. In the practising certificate year 2021/22 we proposed, and had approved, an additional levy to be collected over two years intended to generate an additional income of £145,000 to ensure that our reserves target of six months operating reserve was achieved within a strategic cycle not exceeding five years. In year one the levy generated £75,640 which has contributed to the clearing of the notarial deficit and provided an operating reserve of £90,072 at 31 March 2022. With the budgeted surpluses over the current and following financial years we are on track to reach the target set out in the Operating Reserve Policy as planned by the year ending 31 March 2024.

42. Clearly, we are entering a period of unprecedented (in recent years) inflationary pressures caused in large part by matters outside of the control of the UK Government and other institutions responsible for fiscal policy. Budgeting for the short to medium term is therefore fraught with challenges and a degree of uncertainty and it may be that amendments (possibly significant) will need to be made as the situation develops.

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.

43. We include a copy of the FO Operating Reserves Policy. As indicated above, the historic deficit was cleared in the year ending 31 March 2022 and we are on target to 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.

44. The Faculty Office consulted with the profession in relation to both the Business Plan and the PCF proposals. An email was sent to every practising notary on 11th July attaching a copy of the consultation document which was also available on the Faculty Office website from the same date. The consultation closed on 12th August. We have published a response to the consultation on our website and a copy is provided with this application.

45. Whilst the FO proposals regarding the PCF were largely unchanged (save for the splitting of band 3 into two), this was the first time that the FO had consulted on a formal Business Plan/Priorities. The consultation did not, however, result in the level of interest that might have been anticipated and elicited just 15 responses from the profession and none form any other stakeholders – 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 unchanged on the previous year for 85.3% of the profession, with a further 11% likely to benefit from a reduction of £205 (or 21.5%) and just 3.7% of the profession being asked to pay an additional £75 (representing a below inflation 7.8% increase).

46. The FO was encouraged at the level of support for the overall proposal with 14 out of 15 respondents expressing support and the other respondent expressing no direct opinion either way.

47. 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. 6.67% indicated that they would or might have an impact, 60% believed there would be no impact and 33.33% expressed no view or indicate that they did not feel informed enough to express a view.

48. Given the overwhelming support for the overall PCF proposal, albeit from a low number of respondents, the FO believes that the table of proposed fees, with the introduction of the sixth band, does represent an effective financial solution to maintaining our ability to properly regulate the profession whilst at the same time securing the financial stability and resilience of the regulatory arm of our operation.

49. 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.

50. 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."

51. 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.

52. 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. However, as we are in the second year of the levy collection, the FO made a conscious decision not to seek a Contingency Fund contribution again this year but it may well be that we will seek additional funds for the Contingency Fund in the 2023/24 PCF year.

53. We 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.

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.

54. 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.

55. 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).

56. We have not adopted a policy of pro-rata fees for those notaries who, for whatever reason, only wish to practise for part of a year. Historically, this was intended to encourage the relatively small cohort of practising notaries to be available to consumers all year and to apply to renew their practising certificates in a timely manner, combined with the need to ensure a reasonably predictable income for the Faculty Office and to remove the additional administrative burden of calculating pro-rata fees. However, we will undertake a review of this policy during the current financial year.

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

57. 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.

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

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

- FO Full Audited Company Accounts for the year ending 31 March 2022
- Contingency Fund Account for y/e 31 March 2022
- Comparison of actual and budgeted income and expenditure for the y/e 31 March 2022
- Core Metrics for the y/e 31 March 2022
- FO Budgets for the y/e 31 March 2023/24/25
- Detailed Income and Expenditure forecasts for the y/e 31 March 2023/24/25
- FO Operating Reserves Policy
- FO Business Plan & PCF Consultation Response incorporating the Consultation Document
- Haysmacintyre Audit Findings Report (for LSB information only and not for publication)

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

31st August 2022

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. However, we will review the current policy of not adopting a pro-rata fee for notaries practising for part of a year
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% 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.	Not applicable
Sexual orientation	No	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.	Not applicable
Sex (gender)	Yes	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	Although there may be a potential impact in terms of ability to work either full-time or for only part of a practising

		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 lower turnover paying less than those with higher turnovers, the proposed fee mitigates against any impact on the basis of gender.	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 (but see above a commitment to review our policy of not charging pro-rata fees).
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 members of the regulated community?	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 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). However, as indicated, we will review our policy on pro-rata fees during the course of the current financial year which might further eliminate bias without unduly affecting the predictability of the FO PCF income.
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.		