LSB
LEGAL SERVICES
BOARD

Approval of 2022/23 Practising Fees 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 Practising Fees charged by approved regulators.

2. Practising Fees are fees 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 Practising Fees 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. Practising Fees are payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee as 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 delegates the regulatory functions to the Faculty Office. As such, the Faculty Office is the regulatory body making the application for 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. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)[2].

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

Summary and overview of Practising Fees application and decision

6. The accounting year for the Faculty Office and the Practising Fee year are not the same so the Practising Fees income is spread across two accounting years. The application submitted by the Faculty Office provides that the Practising Fees to be charged to individuals will largely remain the same as in 2022, as set out in the table below, except for a change to split the third turnover band into two. The application states this will mean the practising fee for 2022-2023 for most authorised persons will remain unchanged from the previous year except for 11% of registrants with their Practising Fee reduced by £205 and 3.7% of registrants seeing an increase of £75.

[1] https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf
[2] https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf

Turnover	PC Fee	Deficit/reserve Levy contribution	Contingency Fund contribution	Total	Whether increase /decrease
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	£1030	£75 increase
Up to £300,000	£1020	£250	£0	£1270	No change
Over £300,000	£2270	£300	£0	£2570	No change

7. In 2021/22 the Faculty Office raised a total of £551,830 made up of Practising Fees (including the first year of the deficit/reserve levy contribution). For 2022/23 the Faculty Office has budgeted for total income of £558,485, an increase of £6,655. The Faculty Office has proposed to maintain the deficit/reserve levy contribution for the second year running, which was originally introduced in 2021/22 for the purpose of reducing the deficit and building a reserve and was intended to be in place for two years. We are encouraged to note that the first year of the levy has generated £75,640 and the second year is expected to generate £76,215.

8. The Faculty Office has confirmed the entirety of Practising Fees collected are to be used solely for permitted purposes that are regulatory functions. The deficit/reserve levy contribution aside, the Faculty Office proposes to attribute more than 90% of the Practising Fee income to the first of the permitted purposes (the regulation, accreditation, educating and training of relevant authorised persons and those wishing to become such persons). The balance will mainly be split between the third (participation by the AR in law reform and the legislative process) and sixth (the promotion of relations between the relevant national or international bodies, governments or the legal professions of other jurisdictions). Additionally, a small portion of the Practising Fee income is for the LSB levy (3.4%) the Office of Legal Complaints (which administers the Legal Ombudsman) levy (1%) and OPBAS levy (1.5%).

9. We are satisfied that the Faculty Office's proposed activities for 2022/23, which will be funded by the Practising Fees, fall within the permitted purposes, in compliance with section 51(2) of the Act. The Faculty Office has set out how it intends to discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.

10. We are satisfied that the application provides transparency to the regulated community about the allocation of the Faculty Office's resources (including Practising Fee income). We are satisfied that the engagement strategy of the Faculty Office has allowed it to meaningfully consult with its regulated community.

11. 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.

12. We consider that the Faculty Office has given due consideration to the impact of the level of the Practising Fees on the conduct of legal services by its regulated community in setting them for 2022/23.

13. The LSB's decision is to approve in full the levels of Practising Fees for 2022/3 to be charged to individuals and firms as set out in the application by the Faculty Office.

LSB assessment

Business Plan

14. Within the decision notice last year, the LSB set an expectation that the Faculty Office would publish a strategy or business plan each year which will form the basis of the activities set out in the Practising Fees application. We were pleased to note that at paragraph 6 of the application, the Faculty Office confirmed that it has published and consulted on a draft Business Plan/Master's Priorities document.

15. As the application submitted to the LSB did not include a finalised Business Plan, we asked the Faculty Office to clarify why. We also asked the Faculty Office to confirm whether any changes had been made to the plan consulted upon.

16. The Faculty Office responded attaching a finalised version of its Business Plan confirming that it remains unchanged from the version on which it had originally consulted. We note that whilst the plan has not yet been formally published, the Faculty Office is currently working on a delivery timetable and initial action plan that will be included when its Business Plan is published. The Faculty Office also explained that formal review of progress against the Business Plan would be undertaken and published annually with progress monitored at the Master's Quarterly Council Meetings, the minutes of which are published on the Faculty Office website.

17. We asked the Faculty Office to provide us with a working draft of its delivery timetable so that we were able to consider further its programme of work for the coming year. The Faculty Office provided us with a draft of the action plan timelines that are intended to implement the Business Plan. The plan includes planned timings for how the Faculty Office will progress its work over the next year.

18. For future applications we would expect the Faculty Office to include greater detail in its Business Plan. This should include information setting out, among other things, how it will assess the benefits derived from its programme of activities. This aligns with rule 14(a) of the Practising Certificate Fee Rules 2021 which sets out that it should be clear how the approved regulator proposes to apply the practising fee to a programme of activity, and how the benefits of those activities which are regulatory functions will be assessed.

The proposed new banding

19. The Faculty Office has set out a proposed new level of banding, splitting band three into two separate bands. All bands are based on annual turnover, the details of which are at paragraph 7 above. To understand the full impact of the changes we asked the Faculty Office to confirm how many notaries fall into each band and to explain any impact of the change.

20. The Faculty Office responded by providing the information below:

PCF Year	Number of Notaries	Turnover Band	Practising Fee	Income produced
Last renewal (2021/22)	105	£50-£150,000	£820	£86,100

21. By splitting this band as follows, the projected total income from the two new bands amounts to £86,030 which the Faculty Office confirm is more equitable as the notaries with a lower income pay less:

PCF Year	Number of Notaries	Turnover Band	Practising Fee	Income Produced
2022-23	79	£50-90,000	£750	£59,250
2022-23	26	£90-£150,000	£1,030	£26,780

Economic Climate

22. As part of our assessment of the application, we considered all the budgetary information that was provided by the Faculty Office. When looking at expenditure forecasts, we noted that the draft management charge for the next three years seemed to envisage only minimal increases in costs.

23. We therefore asked the Faculty Office, in light of escalating inflationary pressures, what considerations had been given to the impact of inflation on current costs, with a particular emphasis on the resources available to regulate notarial activities.

24. The Faculty Office responded by attaching corrected versions of the three-year budgets for the regulatory arm stating that it had, by error, included a previous draft of the Management Charge for 2023/4 & 2024/5. The expenditure is known for the 2022/23 budget. For the year 2023/24 the Faculty Office has applied a 7% increase to staff costs, items of expenditure in the Management Charge and to direct expenditure (by including a contingency). For the 2024/25 budget, as the Faculty Office predict inflation will return to the 2% Bank of England target, it has therefore applied a 2% increase.

Regulatory performance

25. We set an expectation last year for the Faculty Office to provide a fuller explanation of how it plans to measure and evaluate its activities, including its ongoing regulatory work. The Faculty Office, at paragraph 8 of the application, directs us that this information is set out within the Business Plan.

26. We were unable to elicit the required information from the draft Business Plan provided and we therefore asked the Faculty Office for a further explanation of how it plans to measure and evaluate its activities, including its ongoing regulatory work.

27. The Faculty Office responded by saying that the Registrar's introduction to the draft Business Plan confirms that the published version will have a delivery timeline / action plan for delivering the work outlined. The Faculty Office confirm that a formal review of progress against the Plan will be undertaken and published annually with progress monitored and kept under review at the Master's Quarterly Council Meetings, the minutes of which are published on the Faculty Office website.

28. When assessing the benefits of the activities, the Faculty Office rely on the Action Plan resulting from the Well-Led Review and the delivery timeline/action plan that it will publish alongside its Business Plan. The Faculty Office state the plan will be regularly updated to identify progress against the delivery timescales to ensure a greater degree of transparency against the planned regulatory activities and the Faculty Office confirms it will seek continued engagement with its regulated community.

29. We also noted that the December 2021 LSB assessment of the Faculty Office's regulatory performance assessed 6 out of 27 outcomes were still 'not met'. We also asked the Faculty Office to provide further information as to how the concerns raised under the regulatory performance assessment framework would be addressed as part of its planned programme of activity.

30. The Faculty Office responded by saying that the work arising from the LSB's assessment is by and large the subject of the agreed Action Plan (which arose out of the LSB's 'Well-led Review'). For future applications we would expect the Faculty Office to set out clearly its plans for the forthcoming year in relation to regulatory performance. This will provide additional transparency to stakeholders for its full planned programme of activity.

<u>Financial information</u>

31. We recognise that the Faculty Office has met the expectation set out within last year's application by commissioning an external audit of its accounts and activities.

32. On a comparison of actual and budgeted income and expenditure for the 2021/22 financial year we found instances of variances over 5%. We therefore asked the Faculty Office to explain the variances in expenditure between the 2021/22 forecast and 2021/22 actual budget, in the event where no previous explanation had been offered.

33. The Faculty Office responded by clarifying the variances over 5% that we had identified between items on the expenditure forecast against actual, providing an explanation for each one.

34. We noted the application recorded, in terms of time spent, that 2.9 Full Time Equivalent (FTE) was spent on notarial work compared to the higher figure of 3.2 for last year. We therefore sought further clarification from the Faculty Office as to why it had reduced the resource allocated to its notarial regulation work, especially in light of recent regulatory performance outcomes.

35. The Faculty Office explained that a reduction in support staff reduced the headline FTE for notarial regulation. However, it stated the direct resource allocated to notarial regulation work in terms of “fee-earner” time spent had not been reduced.

36. The LSB’s Regulatory Performance Framework sets out, under the Well-Led standard that, all regulators should ensure that they have the leadership, capability and capacity, and corporate governance to manage their organisation effectively. With that in mind, we would not expect to see any further reduction in resource allocated to notarial regulation in the coming year, in order for the Faculty Office to have the capacity to meet its commitments both in relation to its proposed programme of work and also in relation to its regulatory performance.

Consultation and engagement

37. Within last year’s application we set an expectation for the Faculty Office to consider further improvements to transparency of its consultation, including providing further detail on proposed work and publishing consultation responses received.

38. We acknowledge the continued work the Faculty Office is doing to increase transparency and accountability especially in the light of the fact that this was the first time it had consulted on a formal Business Plan/Priorities. The Faculty Office consulted on its proposed Business Plan alongside the Practising Fees consultation.

Impact assessments

Equality Impact assessment

39. An initial Equality Impact Assessment (EIA), considering the likely impact of the level of Practising Fees on the regulated community with protected characteristics, has been provided by the Faculty Office at paragraphs 54-56 of the application. To develop its EIA, the Faculty Office carried out an analysis of whether the level of Practising Fees proposed impacted certain groups or individuals.

40. The Faculty Office’s analysis indicated that the level of practising fee proposed has the potential to disadvantage those with a disability that limits their ability to work full-time or those taking time out due to pregnancy or maternity/paternity leave. The Faculty Office observed that as most notaries identify as female, these groups may be impacted through part time work due to childcare or pregnancy/ maternity which would see a reduction in their earning capacity. The Faculty Office acknowledge that those (primarily younger and older) members of the profession may be more significantly affected by limitations on their earning capacity.

41. The Faculty Office observed that all these risks are however, mitigated 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. The Faculty Office has also expressed a commitment to undertake a review of its pro rata policy during the current financial year to address further mitigating factors.

42. We consider that the application provides meaningful consideration of equality issues and demonstrates that this has informed the approach taken by the Faculty Office.

Decision

43. The LSB has approved the Practising Fees application submitted by the Faculty Office for 2022/23 under section 51 of the Act.

Summary of expectations for next application

44. In the next application the LSB would expect the Faculty Office to provide greater detail in its Business Plan, including information for how it will assess the benefits derived from its programme of activities.

45. The LSB expects the Faculty Office to set out clearly its plans for the forthcoming year in relation to regulatory performance.

46. The LSB expects the Faculty Office to show that it is meeting the minimum level set out in the reserves policy, however, if it is not meeting the minimum level, what risks this poses to the organisation and what steps are being taken to meet the levels set out in the policy.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
4 October 2022