LEGAL SERVICES BOARD

Meeting: Legal Services Board

Date: 11 June 2024[1]

Item: Paper (24) 29

Title: Evaluation of Practising Fee Rules and Guidance 2021

Author(s): Vibeke Bjornfors, Statutory Decisions Lead

Status: Official

Introduction: Purpose of the paper

1. To present an evaluation of applications made from 2021/22 to 2023/2024 by regulators to the LSB for approval of practising fees under section 51 of the Legal Services Act 2007 (the Act) and the LSB Practising Fee Rules 2021 (2021 Rules).

Recommendation

2. The Board is invited to note the findings of the evaluation exercise and proposed next steps.

Timing

3. The next 2024/25 practising fee cycle is expected to begin in August 2024 and end in early spring. The findings from the evaluation exercise will inform how we undertake this work going forward.

Background

4. The LSB must approve under section 51 of the Act each regulator's annual practising fee, before it collects that fee from individuals and firms seeking authorisation to carry out reserved legal activities. Section 51(3) and (6) of the Act obliges the LSB to make rules specifying the permitted purposes, with provisions on the criteria, material, process and procedure for applications. Regulators' applications for practising fee approval must comply with the 2021 Rules and the accompanying statutory guidance – these, together with the Act, provide the framework for the practising fee application and approval process.

5. Amounts raised by the practising fee may only be used by regulators to fund the permitted purposes prescribed in section 51 of the Act and the 2021 Rules. Permitted purposes under section 51 cover regulatory functions and representative functions. Therefore, the level of the fee is determined by the approved regulator who, together with the corresponding regulatory body (if there is one), submits an application.

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6. The 2021 Rules were designed to achieve 4 key outcomes as summarised below:
    - increase transparency
    - encourage meaningful debate on the cost and benefits of regulation resulting in improved standards
    - regulators demonstrate they have sufficient funds and financial resilience to regulate effectively and efficiently
    - inform the LSB's wider responsibilities.

7. In June 2022, the Board received an evaluation of the first cycle of applications under the 2021 Rules.[2] Although the 2021 Rules had only been in place for a short period, the overall finding was that there had been an immediate and tangible impact and progress towards the outcomes the LSB sought to achieve. In that paper, the Executive undertook to carry out evaluative research in relation to the applications process every two years, following implementation. The purpose of the evaluative research was to assess the impact of the 2021 Rules and guidance to identify longer term impacts. This is our second evaluation since the 2021 Rules were introduced. It covers the period 2021/2022, 2022/23 and 2023/24.

8. Due to the small sample size in the evaluation – eight applications per year – the results are susceptible to variables including unexpected issues arising in the wider legal sector, as well as issues that a particular regulator may be facing in any one year that may impact on the application. This in turn can affect how a regulator makes an application and impact the LSB's assessment. Despite this, our overall experience is that the practising fee application and approval procedure under the 2021 Rules has led to an improvement in the standard of applications made by regulators. This has enabled us to examine applications more thoroughly and scrutinise the use and impact of practicing fees, in pursuit of the desired outcomes.

Analysis

9. The LSB receives eight practising fee applications annually, and this evaluation provides a snapshot of three years' worth of evidence against the four key outcomes. Evaluation findings are summarised below. The data indicates:

    - ***Outcome 1 – Increased transparency around regulators' programmes of activity and how these will be funded, allowing those that pay the practising fee to drive accountability for its expenditure*:** There is greater transparency in applications providing assurance around regulators programmes of activity funded by the practising fee. However, transparency on the benefits of delivered programmes of activities is inconsistent. In addition, the number of information requests made by the LSB to regulators on the sources and adequacy of funding to provide assurance has not changed. Overall, while applications are generally more comprehensible and better explained since the 2021 Rules were introduced, there remains scope for further improvement in this area.

- ***Outcome 2 – Encourage discussion and debate on the purpose, benefits, costs, and value of regulation, to improve standards and promote the regulatory objectives:*** Regulators demonstrated a sustained step change in active engagement with their regulated communities. Prior to the introduction of the 2021 Rules, some regulators did not hold formal consultations on their annual practising fees. All regulators have demonstrated how their programme of activities relate to the regulatory objectives. While it is too early to demonstrate the extent of the impact, this is something which future regulatory performance reviews should capture. 23 out of 24 applications included strong or some evidence of consideration of equality, diversity and inclusion impacts, although there has been slight a downward trajectory for this metric over the last two years.

- ***Outcome 3 – regulators have sufficient funds and financial resilience to regulate and operate efficiently and cost effectively*:** There has been some improvement since 2021. Of 24 applications, 23 demonstrated some or strong evidence of financial resilience, and 22 showed some or strong evidence of regulators operating efficiently and cost-effectively.

- ***Outcome 4 – To inform the LSB's wider oversight responsibilities:*** There has also been some improvement since 2021. 17 out of 24 applications (7 of 8 applications in 2023/24) demonstrate a link between practising fee income and areas that we have identified regulators should focus on in our annual performance assessments. Evidence of how practising fee income will be used in such areas is routinely included in regulators' applications.

Timing of decisions

10. The 2021 Rules and guidance together provide that the LSB will make a decision on applications within 35 calendar days, which may be extended in exceptional circumstances. The average number of days taken by the LSB to issue a decision in each of the last three financial years is:

- 2021/22 - 32 days.
- 2022/23 - 35 days.
- 2023/24 - 35 days.

11. The joined-up approach we are taking, and an increase in the amount and quality of the data provided by regulators in applications, has meant we have been able to interrogate regulators applications more fully in order to get better assurance. This has led to a slight increase in the time taken to make decisions.

Feedback from regulators

12. We sought informal feedback from regulators as part of this evaluation and received six responses. Three regulators considered that the 2021 Rules and guidance provided a helpful and clear framework for applications. Three regulators cited consultation fatigue and administrative burden in consulting on

the level of the fee. One questioned the potential duplication between their board reviewing the same information in making an application and the LSB considering the same information in approving the application. Another queried the amount of financial information needed in each application.

13. We intend to reiterate to regulators the importance of continued transparency and highlight the importance of information requirements needed to inform the LSB's decision making on applications. In carrying out the assessments of applications and asking follow-up questions, we will continue to have regard to the need to be proportionate and consistent in our approach.

Next steps

14. The findings from the evaluation exercise will inform how we progress this work, improve the efficacy of the practising fee application and approval procedure, and hold regulators to account. We will continue to monitor and evaluate the longer-term impact on outcomes and look at how we best optimise evaluation in the future. The 2021 Rules and guidance have been in place for only three years and impacts may require a longer period to fully materialise.

15. Feedback to each regulator will be provided as part of the assessment process of each application, and we will respond to the informal feedback from regulators as necessary.

Risks and mitigations	
Financial:	Evaluation exercise completed within existing resourcing and budget
Legal:	This paper has been reviewed by a member of the legal team
Communications and engagement:	We will publish the evaluation report and share bespoke feedback with the applicants
Equality and diversity:	All applications are required to include consideration of equality and diversity.
Resource:	Evaluation exercise completed within existing resourcing and budget
Environmental:	N/A

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
N/A	N/A	N/A