



**LEGAL SERVICES
BOARD**

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Mandie Lavin
Director
Bar Standards Board
289-293 High Holborn
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8 November 2010

Dear Mandie

Approval of the application made by the Bar Council (BC) and the Bar Standards Board (BSB) to the Legal Services Board under s.51 of the Legal Service Act 2007 for the level of practising fees

I am pleased to inform you that the 2011/12 practising fee levels as set out in your application of 18 October 2010 have been approved by the Legal Services Board. This decision has been made under the authority delegated to me as Chief Executive by the LSB Board and follows the exemption direction from the requirement for LSB approval of amendments to the BSB's Practising Certificate Rules (Annex D) and Rule 901.1 of the Code of Conduct effective from 15 October 2010.

We are content that the information that you have provided indicates that the criteria within the Board's Practising Fee Rules have been met. I am grateful to the BC representatives, particularly Brian Buck, who have worked with my staff during the approval process to reach this position.

In particular, the Board commends the open and transparent process undertaken by the BC/BSB when consulting on the proposed changes to the Practising Certificate Fee (PCF) charging structure. We are satisfied that the members of the employed and self-employed Bar that would have been affected by the proposed changes to the charging structure have had their views properly considered and that their feedback has contributed significantly to the final decision making process.

We acknowledge that this year's practising fee approval process is in a transitional year for many of the Approved Regulators (ARs). We will be conducting a general lessons learned exercise to determine how to improve the process further in the context of next year's round. We look forward to maintaining dialogue on this over the coming months.

There are three specific areas where we consider there are improvements to be made in the practising fee process adopted by BC/BSB this year and where we would therefore expect to see changes made in time for the submission of next year's application.

First, we note the omission of any consultation with non-commercial bodies as the one gap in an otherwise very strong consultation process. We understand that the Finance and Audit Committee have taken the decision, based on experience dealing with charitable bodies, to give preferential rates to barristers working wholly for a charitable body; but we would expect the consultation process next year to be open to non-commercial bodies.

Second, in line with the ongoing discussions on service level agreements and the updated finance manual consequent on our agreement of the settlement of the independence certificate, we will expect further development in protocols between the BC and BSB for submitting next year's application. This should include clear arrangements for consultation with the BC as the representative body and acknowledgement that managing the allocation of practicing fee income, other than any income for non-regulatory permitted purposes, rightly sits with the BSB. We are likely to seek greater assurance in next year's exercise about the existence of such protocols and how they have been applied in practice.

Third, the Board was surprised to note the comment at the end of page 12 of your application that central services costs are attributable entirely to permitted purposes, which would include all of those costs supporting representational activity. Brian explained the allocation of central services costs between corporate representation and regulatory functions to Edwin Josephs in a telephone conversation of 4 November. We understand that non-PCF income off-sets central services costs supporting the former and therefore we will approve the practising fee levels this round. However, I should note for the record that we remain concerned about the policy and legal acceptability of applying any of the practising fee monies to costs associated with purposes which may not be permitted purposes and will consider this issue further in the context of next year's round.

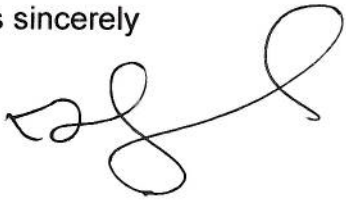
Finally, there is one area of the application that we note as a potential risk which you may wish to consider further in developing your practice in future years.

In the conversation with Brian Buck, referred to above, we sought clarification on a discrepancy in the figures provided in the application which omitted the Levy cost of LSB/OLC for running costs, both of which would need to be paid by 31 March 2012. The BC advised that LSB/OLC contributions from practitioners to the Levy monies due in March 2011 will be paid from fees collected during the first quarter of 2011 and monies due in March 2012 from fees collected during the first quarter of 2012. This is essentially a question of cash flow management and hence primarily a decision for the BC to determine and not the LSB in their role as oversight regulator, but we do note that it presents a small risk that the BC could fall short of enough fees to pay our contributions and may have to dip into their reserves. We accept that the BC was aware of the risk in making its decision and Brian's assurance that it can be effectively managed.

Please contact Sonya Gedson, Regulatory Associate,
sonya.gedson@legalservicesboard.org.uk or 020 7271 0073 if you have any questions.

I have written in identical terms to the BC representatives David Hobart, Chief Executive and Andrew Mitchell QC, Treasurer.

Yours sincerely

PP 

Chris Kenny
Chief Executive

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