

FACULTY OFFICE

APPLICATION TO LEGAL SERVICES BOARD FOR APPROVAL OF PRACTISING FEES 2010/11

Introduction

On behalf of the Master of the Faculties I am making the above application under section 51 of the Legal Services Act 2007 ('LSA 2007') and the rules made by the Legal Services Board ('LSB') under that part (the Practising Fee Rules 2009).

Background

Notaries are required to apply for a certificate to practise from 1st November to 31st October in the following year (Public Notaries (Practising Certificates) Rules 1982 & 1991). It is an offence to practise otherwise than in possession of a current valid practising certificate (Notaries (Conduct and Discipline) Rules 2009). A fee is required to be paid for the practising certificate, and a contribution must be paid to the Faculty Office Contingency Fund at the same time. The level of such a fee and contribution is determined from time to time by the Master of the Faculties. If a notary applies for a practising certificate part-way through a practising year he/she must pay the full amount which was owed on 1st November of that period.

Proposals

- In the practising year 1st November 2009 - 31st October 2010 notaries paid the following fee and contribution:-

Practising certificate - £260

Contribution to Contingency Fund - £10

- In the practising year 1st November 2010 - 31st October 2011 the Master intends to set the following fee and contribution:-

Practising certificate - £340 (an increase of £80)

Contribution to Contingency Fund - £10 (unchanged)

The Master of Faculties also requires fees to be paid on appointment as a notary and in relation to notarial qualifications. However these are not the subject of this application.

Permitted purposes

Rule 5 of the Practising Fee Rules requires that monies raised through practising fees must not be applied for any purpose other than one or more of the permitted purposes. The Faculty Office has no representative functions. The profession is instead served by two representative societies, the Society of Scrivener Notaries and The Notaries Society. The distinction between these functions is clarified in the statement of compliance with the LSB Internal Governance Rules 2009 made by the Master of the Faculties. As such all Faculty Office revenue from notarial practising fees is expended on the permitted purposes, and almost entirely on the regulation and accreditation of

notaries. The Faculty Office expenditure for the financial years 2008 and 2009 are attached and itemise the purposes to which Faculty Office revenue has been applied (annex 2).

The items included in the 2009 expenditure reflect the nature of the expenditure which is likely to be made in 2010.

Reasons for proposed fee and contribution

The Faculty Office operates a calendar year accounting period. The 2010 budget is attached (annex 1). As the practising year does not coincide with the accounting year the budget reflects that fees will be collected from both practising years. The budget relies on the assumption that the number of notaries reapplying for a notarial practising certificate will remain similar to earlier years. This information is derived from the numbers of individuals known to be studying to become notaries, and from appointments and retirements in 2009.

It is necessary to increase the level of the practising fee first to compensate for the retained shortfall from the years 2007 and 2008, and because of the charges which have been levied on the Faculty Office by the Legal Services Board, and because of increased expenditure on Faculty Office staff for LSB related work.

We propose to increase the level of the practising fee by 24% compared with the previous year. This is required to reduce the accumulated deficit from earlier years to nil, and takes into consideration the Legal Services Levy, which constitutes a substantial proportion of the total proposed increase. The Faculty Office estimates that the LSB imposed charges themselves exceed £44 per notary for three years, being the estimate of £35 per notary running costs of the LSB and £9 p.a. approximately establishment costs per notary.

The 2009 accounts for the Faculty Office Contingency Fund are attached (annex 3). Over several years claims on the Contingency Fund have been few. A claim was made in 2008 to reimburse the Faculty Office costs in relation to a disciplinary case. The level of the contribution was increased from £5 to £10 in 2009. The fund now stands at £66,957 and it is intended to build the fund up to the level of £100,000 to provide for extraordinary expenditure on discipline related matters from time to time. Taking into consideration the increase in the financial burden placed upon notaries with the increase in the practising certificate fee and the doubling of the contribution in 2009, the Master considers the level of the contribution to be adequate for the time being.

Form of consultation with the profession

The Faculty Office has consulted with the profession by formally writing to the secretaries of the two representative societies, the Society of Scrivener Notaries and the Notaries Society. In turn the secretaries are able to consult their members and report back to the Faculty Office. The representative societies are provided with the accounts for the previous financial year, the attached budget (annex 1) and a note of how the level of the fees has been determined. The Master reminded members of the profession of the proposed fees during his speech at the Notaries Society annual conference on 17 September 2010. The Faculty Office has received no adverse comment in relation to these proposals. The Secretary of the Society of Scrivener

Notaries advised the Registrar on 14 September at a meeting that the proposed fees were acceptable to the Society.

In addition, once the Faculty Office has received the approval of the LSB for the level of the fee and contribution, it will include an explanatory note with the application forms for the renewal of practising certificates which is sent to all practising notaries as to the level of the fees, or a reference to such information being available to read on the Faculty Office website (and on request).

Reasons for not adopting a variable fee

While the Solicitors Regulation Authority has set variable fees depending on the size of the firm in which the solicitor practises, this was not considered appropriate for notaries because the vast majority of notaries practise as sole-practitioners in their capacity as a notary. The Bar Vocational Council have also considered setting variable fees depending upon the year of call of the barrister or whether they have been given silk. We consider that it would be a disproportionately burdensome exercise to try to calibrate notarial fees on a 'means-tested' basis, and consider that this could give rise to obvious unfairness if the calculation was conducted without the fullest of information about the notary's practice.

Diversity impact

Although the LSB is not requiring a full diversity and impact this year, we wish to note that we do not consider that the level of the fees will have any adverse effect on the diversity of the profession. Additionally, without a variable fee (which has been discounted for the reasons above) it would not be possible to effect a system which is any fairer than requiring a single fee for each notary.

Contact information

Further information relating to this application is available from:-

The Registrar
The Faculty Office
1 The Sanctuary
Westminster
London
SW1P 3JT

email. faculty.office@1thesanctuary.com

telephone. 020 7222 5381 (please ask to speak to Ian Blaney)



P.F.B.BEESLEY, REGISTRAR

23rd September 2010

ANNEX 1

FACULTY OFFICE NOTARIAL BUDGET YEAR ENDED 31 DECEMBER 2010

NOTARIES	£	£
Income:		
Balance 2009 practising certificates (175x£260)	45,500	
695 2010 certificates @ £340	236,300	
Appointments	32,200	
Academic qualification fees	11,500	325,500
Less Expenditure:		
Management Charge	223,130	
Direct Expenditure	44,731	
Legal Services Board fee 2010*	39,080	306,941
Projected Notaries Surplus		£18,560 **

* Represents 1st instalment set up costs £9,514 and 1st quarter of 2010 running costs at £6,728 – total £16,242 which were paid in May 2010 plus 3 further quarters in 2010 estimated at £35 per notary i.e. £870x35/4x3 = £22,838.

** It should be noted that the accumulated shortfall brought forward in the Notaries accounts comes to £20,054 (see summary below).

NB. The budget for 2011/12 will need to include the 2nd instalment of the LSB set up costs of £9,514, the first quarter of 2011 LSB running costs at the current estimate of £35 per notary plus the remaining three quarters of 2011 running costs which will be calculated in the next round of LSB budgetary processes.

SUMMARY OF NOTARIAL SURPLUS/SHORTFALLS 2006-2009

b/f from 2006	2007	2008	2009	Retained Surplus/Shortfall in 2009 Accounts
£6,033	-£15,764	-£26,090	£15,767	-£20,054

ANNEX 2

FACULTY OFFICE
NOTARIAL FEES AND EXPENSES
YEAR ENDED 31 DECEMBER 2009

	2009		2008	
	£	£	£	£
Notarial and Practising				
Certificates Fees		239,674		155,904
Notarial Admission Fees		11,555		8,780
		<u>251,229</u>		<u>164,684</u>
LESS:				
Expenditure – Indirect				
Registrar’s Fees	7,902		16,568	
Rent and rates	22,818		18,706	
Light and heat	2,117		1,353	
Stationery	2,872		2,733	
Postage	2,051		2,178	
Telephone	2,050		1,785	
Repairs and maintenance	5,054		4,975	
Insurance	2,218		1,802	
Sundries	4,746		2,257	
Cleaning	3,005		2,033	
Copying	1,117		1,672	
Security	94		572	
Catering	1,023		867	
Irrecoverable VAT	8,560		9,948	
	<u>65,627</u>		<u>67,449</u>	
Expenditure - Direct				
Salaries & N.I. (jointly employed staff)	137,095		96,732	
Crown Office fees	375		125	
Accountancy	2,738		225	
Printing and stationery	9,691		9,382	
Sundry	2,876		1,885	
Admission Expenses	1,672		1,667	
Insurance	4,904		3,478	
	<u>159,351</u>		<u>113,494</u>	
		<u>(224,978)</u>		<u>(180,943)</u>
		26,251		(16,259)
Less:				
Retainer due to the Master of Faculties		(10,484)		(9,831)
Surplus		<u>£15,767</u>		<u>£(26,090)</u>

ANNEX 3

FACULTY OFFICE - CONTINGENCY FUND

INCOME ACCOUNT

YEAR ENDED 31 DECEMBER 2009

	£	2009	£	£	2008	£
CONTRIBUTION FROM NOTARIAL PRACTISING CERTS			7,295			4,120
Bank deposit interest			38			1,185
Less:						
Expenses for Disciplinary Hearings	-			4,694		
Provision for income tax	8			277		
Fees re Income tax payment	294			287		
			<u>(302)</u>			<u>(5,258)</u>
Retained surplus for the year			<u>£7,031</u>			<u>£47</u>
BALANCE SHEET						
AS AT 31 DECEMBER 2009						
	£	2009	£	£	2008	£
ASSETS						
Deposit and current accounts	63,148			63,323		
Sundry Debtors	7,111			402		
			<u>70,259</u>			<u>63,725</u>
LESS LIABILITIES						
Sundry creditors	294			288		
Income tax payable	8			511		
			<u>(302)</u>			<u>(799)</u>
NET CURRENT ASSETS			<u>£69,957</u>			<u>£62,926</u>
REPRESENTED BY:						
Contingency Fund Capital Account						
Balance as at 1 January			62,926			62,879
Retained surplus for year			7,031			47
Balance at 31 December			<u>£69,957</u>			<u>£62,926</u>

ACCOUNTANTS' REPORT

We have prepared, without carrying out an audit, the above balance sheet and accounts from the Registrar's records and from information and explanations supplied to us.

haysmacintyre
haysmacintyre
Chartered Accountants

Fairfax House
15 Fulwood Place
London WC1V 6AY
Date, 25 March 2010