

Name of Body	BC/BSB
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	Date	Type of format received	Confirmation of receipt sent?	Document link
Receipt of full application	18/10/2010	Email	Yes	http://www.legalservicesboard.org.uk/Projects/independent_regulation/index.htm

Initial pre-application process including draft documents or correspondence received for assessment against the final application

	Yes or No	Description	Document link	Date received
Was there any correspondence received from the AR prior to the submission of the final application?	Yes	A meeting was held with LSB and Bar Council (BC) representatives (David Hobart, CEO; Oliver Delany, Director of Central Services; Brian Buck Chief Accountant) on 19 August 2010 to discuss the s.51 application. A further meeting was held with Brian Buck on 05 October 2010 to discuss the final application before it was submitted on the 18 October.	n/a	19/08/10 & 05/10/10
Were any documents received from the AR prior to the submission of the final application?	Yes	The BC sent a draft s.51 application to the LSB for comment on 24 August. The BC also notified the LSB on 26 August that information was posted on their website informing members on the 'Proposed changes to the Practising Certificate Fee for 2010/2011'.	n/a	24/08/10 & 26/08/10
To what section of the final criteria do these documents relate?	Yes	The budget setting process, budget figures and commentary description of the information to be disseminated to members.	n/a	n/a
Do we have any concerns arising from the documentation?	Yes	An issue was raised on whether the expenditure allocated to 'Remuneration' includes negotiation of legal aid contracts.	n/a	n/a
How and what have we communicated back to the AR?	Yes	A phone call to Brian Buck was made on 27 October to clarify issues arising from the application. This was followed up by an email summarising the queries outlined in the conversation.	n/a	27/10/2010
What was the outcome of the exchange for correspondence?	Yes	The BC provided the necessary information we requested.	n/a	29/10/2010

Do we have any concerns arising from this exchange?	Yes	During consultation on IGRs and PCF rules and in subsequent conversations; the question of whether lobbying the government on legal aid remuneration fell within the permitted purposes was discussed. The BC has confirmed that they are very conscious of our position on legal aid remuneration and confirms that in setting the proposed practising fees / budget for 2011 they overestimated the value of this work and made sure that it still fit within the envelope of non-PCF income.	n/a	02/11/2010
Have these concerns been resolved?	Yes	n/a	n/a	n/a

Summary

The BC & BSB have provided the necessary information for the LSB to consider the application against the criteria for approving practising fee applications. It is important to note that the application sets out that the PCF year for self-employed barristers ran from 01 Jan to 31 Dec which differed from the PCF year for employed barristers which runs from 01 Apr to 31 Mar. The BC/BSB has decided to align these differences to match the PCF for both employed and self-employed barristers to the financial year for accounting and therefore have included a 15 month PCF for self-employed barristers for this year from 01 Jan 2011 to 01 April 2012. This is a change to the regulatory arrangements which is considered in a separate application to the LSB under Schedule 4 of the Act. The BC draft amendments to the Code of Conduct and PC Regulations (as a consequence of the BC's review of the PCF for 2011/2012) were exempted by the LSB on 15 October 2010.

Overall level of concern No concern

Section 1: Developing the application and setting the budget

This section of the criteria refers to D10a & D11a /D11d of the Practising fee Rules 2009.

Criteria - application	Yes or No	LSB Assessment
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Criteria - budget	Yes or No	LSB Assessment
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Is there a description of how the application was developed and settled?	Yes	The joint Finance Committee and Audit Committee (FAC) of the BC and BSB determined the budget and consequent PCF levels to be recommended for the 15-month period January 2011 to March 2012.
Is there sufficient detail to make an assessment of 'reasonable care' when settling the application?	Yes	The BC has engaged with the LSB early in the development process of this application. A draft application was submitted to the LSB in advance of receiving the final application on 18 October and any issues arising were discussed in two separate meetings with LSB and BC representatives..

Is there a description of how the budget was developed and settled?	Yes	The FAC prepares a single overall budget for the BC, and BSB provides the level reasonably required to carry out their regulatory functions. The BSB confirmed that the budgetary provision is sufficient for their regulatory purposes, and the BC recommended that the range of any increase to the core PCF should be between 2.5-7.5%. BC invited the FAC to regulate the acceptable level of risk in the budget settlement by adjusting the PCF to be paid by self-employed barristers and employed barristers. The FAC decided on 12 October to seek the LSB's agreement to a 5% rise in teh core PCF for 2011/12 for all practising self-employed barristers and employed barristers.
Is there evidence that the budget was settled in light of immediate and medium term budgetary needs?	Yes	The FAC decision to recommend a 5% increase in PCF and not higher has resulted in a risk of deficit, the whole BC has under-spent over the prior 3 years (including the current year) and it was felt that the 5% rise struck the right balance. In calculating the 15 month budget, the revised deficit is £0.402m (up from £0.244m for 12 months).
Is there a description of contingency arrangements?	Yes	The FAC concluded that as much as it might wish to add further to the care PCF 5% increase, the risk posed by the £0.402m deficit was manageable until April 2012.

Does this include a section on the consultation undertaken with practitioners?	Yes	In March/April 2010, the entire profession was invited to contribute to a consultation on structural issues rather than actual levels of PCF. The FAC considered the responses and recommended a number of new proposals for the PCF 2011/12.
Is there a description of the revenue raised broken down between functional department and expenditure head for:		
Previous year?	Yes	This breakdown is included in the application.
Forecast year?	Yes	As above
Is there a description of a significant variance from the previous year in terms of:		
Total revenue?	Yes	This breakdown is included in the application and notes the 5% increase in the core PCF. The application also gives a section explaining assumptions and risks for both income and expenditure; the FAC will be asked to approve a major IT project to implement a new core database with an anticipated cost of £330-500k with the expenditure split 50/50 between 2010 and 2011.
Split between functional departments and expenditure heads?	Yes	See above.

Overall comments

n/a

Evaluation

The application meets Section 1 in the criteria for practising fee applications issued by the LSB.

Overall comments

A conversation was held between the BC and LSB on 04 November to discuss the 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. The LSB acknowledges that this is essentially a question of cash flow. Although there is a small risk that the BC could fall short of enough fees to pay our contributions they may have the option of dipping into their reserves to cover any shortfall. The LSB also sought further information on the allocation of income to the BC/BSB central services and are satisfied that the outstanding queries have been answered.

Evaluation

The application meets Section 1 in the criteria for practising fee applications issued by the LSB.

Section 2: Permitted purposes

This section of the criteria refers to D10b & D11e/D11b of the Practising fee Rules 2009.

Criteria	Yes or No	LSB Assessment
Is there evidence that the revenue raised through practising fee charge are applied solely to the permitted purposes?	Yes	The application gives a breakdown of expenditure categories that are deemed to fall within the definition of 'permitted purposes' as set out in the Practising Fee Rules 2009.
Previous year?	Yes	The application gives an analysis of expenditure for the actual year to 31/12/09 (12 months - previous year).
Forecast year?	Yes	The application gives an analysis of expenditure for the forecast year to 31/12/10 (12 months) and Budget period to 31/03/12 (15 months).
Does it include a budget that shows:		
Anticipated income from practising fees	Yes	The application gives a breakdown of practising certificate fees i.e. 'PCF - Fund core activities', LSB/OLC Levy and Pension Fund Levy.
All other expected income to be applied to permitted purposes	Yes	The application lists all other sources of income to be applied to the permitted purposes.
Planned expenditure of income against permitted purposes	Yes	The application gives a clear breakdown on the PCF core income and how it is allocated to each expenditure head.
Does it include an analysis of spend against the permitted purposes?	Yes	The application sets out that the PCF income is only allocated to expenditure categories which are deemed to fall within the permitted purposes and gives a table of commentary that breaks down each relevant permitted purpose and applies an expenditure heading.
Is this broken down by functional department / expenditure head?	Yes	The application includes a breakdown by department head.

Overall comments

n/a

Evaluation

The application meets Section 2 in the criteria for practising fee applications issued by the LSB.

Level of concern No concern

Section 3: Regulatory functions

This section of the criteria refers to D10c D10d & D11c of the Practising fee Rules 2009.

Criteria	Yes or No	LSB Assessment
Is there an explanation of how the revenue raised by practising fees is applied to - i.e.		
Permitted purposes which are regulatory functions (not representative)	Yes	The 2011/12 budget sets out the PCF core income which is allocated to regulation expenditure which fall within the permitted purposes i.e. Expenditure on - professional conduct/disciplinary, qualification regulation and professional practice. The application also states that all of the BSB activities fall within Rule 6 of the Practising Fee Rules 2009.
Permitted purposes which are not regulatory functions	Yes	The 2011/12 budget indicates that the PCF core income which is allocated to other permitted purposes which is not regulation but none-the-less fall within other permitted purposes. This includes the expenditure heads titled:- Approved Regulator: Corporate, Representation: Professional Affairs, Representation: Remuneration: Policy and Representation: International /Europe.
Is there clarity and transparency of how the revenue raised is to be applied to - i.e.		
Permitted purposes which are regulatory functions (not representative)	Yes	See above
Permitted purposes which are not regulatory functions	Yes	See above

Overall comments

n/a

Evaluation

The application meets Section 3 in the criteria for practising fee applications issued by the LSB.

Level of concern: **No concern**

Section 4: Clarity and transparency

This section of the criteria refers to D10e of the Practising fee Rules 2009 & section 51(b) of the Act

Criteria	Yes or No	LSB Assessment
Consultation with members		
Does the application include a description of their consultation undertaken with their members mandated to pay practising fees?	Yes	The entire profession was invited to contribute to a consultation on structural issues rather than the actual level of the PCF in March/April 2010.
If yes, does the description of the consultation process include transparency and clarity of how the fee level has been set and how the money collected will be used?	Yes	On 26 August, the BC consulted on the proposed changes to the practising certificate fee for 2011/12. This included indicative figures for each barrister would have to pay and a copy of the budgeted income and expenditure statement.
If yes, does the application also include a description of how that feedback influenced the decision-making and policy development processes?	Yes	The results from the earlier consultation in March 2010 to seek to remove the difference between the size of the PCF paid by self-employed and employed barristers, and also to seek to remove a number of the PCF bands thereby introducing a flat fee for the core PCF for the majority of practitioners. The overall effect of flattening the core fee structure would penalise junior more than senior barristers; this could also disadvantage women and BME practitioners. Responses to the consultation convinced the FAC to revert to the status quo ante for the PCF bands for this coming PCF round. The proposals to move to a revised PCF financial year for all practitioners with a 15-month transition period for the self-employed Bar, were supported.

Is the level of information provided to members similar to what has been provided in the criteria?	Yes	On 26 August, the BC consulted on the proposed changes to the practising certificate fee for 2011/12. This included indicative figures showing what each barrister would have to pay and a copy of the budgeted income and expenditure statement, similar to what was provided in this application for the LSB's criteria for approving practising fee levels.
In terms of the level of information provided to members, does the application include the recommended use of the 'Council Tax bill' analogy and/or another form of web-based linked information?	Yes	The application includes a section on 'Where does my money go' which gives an estimated breakdown for every £1 received in PCF, the analysis of the money spent on the various permitted purposes.
If yes, when was this information issued to the mandated members paying the practice fees i.e. as the fee note issued or shortly afterward?	Yes	The BC intends to send every practitioner a thorough analysis entitled 'How your PCF is compiled'. This approach to communicating with the profession worked well for the 2010 PCF, and will be developed further. The analysis, akin to a householder's Council Tax explanation, will include a letter from the Chair of the BSB explaining in detail the breakdown of the BSB's budget, and its functional attribution. It will also include a letter from the Chairman of the FAC outlining the financial context and the various obligations faced by the BC.
Consultation with representative governing councils or the equivalent		
Alternative to the above, does the application set out that changes to the practising fee arrangements are minimal, and consultation was therefore only involved representative governing councils or the equivalent?		n/a
If yes, is there a description of what consultation that was taken place?		n/a
If yes, does the application also include a description of how that feedback influenced the decision-making and policy development processes?		n/a

Overall comments

n/a

Evaluation

The application meets Section 4 in the criteria for practising fee applications issued by the LSB.

Level of concern: **No concern**

Section 5: Regulatory and diversity impact assessment

This section of the criteria refers to D11f of the Practising fee Rules 2009

Criteria	Yes or No	LSB Assessment
Does the application include a regulatory or diversity impact assessment?		Please note the LSB set out in Section 5 of the criteria for practising fee applications that we do not require a regulatory or diversity impact assessment to be completed for this year's practising fee applications.
If no, does the application include a description of how their proposals were tested against the regulatory principles?		n/a
Does the application include a description of how the proposals have been developed with consideration of any potential impact on diversity issues?	Yes	The FAC identified a number of equalities issues with the proposed changes to the practising fee structure. For example, flattening the fee structure would result in younger members (up to 13 yrs call) being penalised while older (over 13 yrs call) benefited; women were also disadvantaged as they represented a higher proportion of 0-13yrs called. In addition, women and BME barristers represent a higher proportion of the employed bar and the decision to align the PCF paid by the self-employed and employed members would result in a higher PCF for these groups.

Overall comments

In light of the responses to the consultation, it was concluded that while it may disadvantage some, such as those winding down practices leading up to retirement, the present PCF banding system is an overall equality and diversity benefit as it assists new entrants to the profession who carry a heavy burden of debt, and the importance of the first seven years in the profession in establishing a successful and financially viable future in the Bar leads to the conclusion that setting fees at modest levels for the lowest three tiers of bands promotes diversity.

Evaluation

The application meets the requirements for Section 5 in the criteria for practising fee applications issued by the LSB.

Level of concern: **No concern**

Section 6: Consultation with non-commercial bodies and the Consumer Panel

This section of the criteria refers to D12 of the Practising fee Rules 2009 & Section 51 (7) (a) of the Act

Criteria - non-commercial bodies	Yes or No	LSB Assessment
Does the application include a description of steps the AR has taken to ensure the impacts of the persons providing non-commercial legal services have been considered when setting the fees?		n/a
Has the AR shared details of the practising fee level with appropriate bodies such as the Law Centres Federation, Citizens Advice and Advice Service Alliance in advance of the submission of the application?		n/a
Have the non-commercial bodies provided any response to the details shared to them by the AR?		n/a

Overall comments

The application does not set out any consultation with non-commercial bodies. However, this will be included in the BC/BSB process for setting the practising fee levels for next year and will be covered in the LSB's lessons learned exercise to be conducted in December setting out ways the ARs and the LSB can improve the process for next year's round. In a meeting between the LSB and BC there was a strong indication from the BC that there were no issues with non-commercial bodies in setting the practising fee levels for self-employed and employed barristers. The FAC has taken the decision – based on experience of dealing with charitable bodies – to give preferential rates to barristers working wholly for a charitable body.

Evaluation

The application in terms of the criteria relating to non-commercial bodies relating to Section 6 of the criteria for practising fee applications as issued by the LSB is deemed acceptable.

Level of concern: **No concern**

General Evaluation

Criteria - Consumer Panel/others	Yes or No	LSB Assessment
Have we provided a copy of the application to the Consumer Panel?	Yes	Application sent to Consumer Panel Manager on 21 October 2010.
What are their immediate concerns or issues raised (if applicable)?		Nil response for the Consumer Panel.
Have we considered if we need to consult with anyone else on this application?	Yes	n/a
If yes, what consultation has taken place and with whom?		n/a
What was the outcome of this exchange i.e. Do we have any immediate concerns that has the potential to delay the approval of the application?		n/a

Overall comments

n/a

Evaluation

The application in terms of the criteria relating to the Consumer Panel and Others meets Section 6 of the criteria for practising fee applications as issued by the LSB.

Level of concern: **No concern**

Summary of LSB assessment - i.e. Approval and/or approval with conditions or rejection

The Practising Fee Team recommends the approval of the BC/BSB application.