

The Faculty Office

Part One: Summary and recommendation

Summary

Total budget £404,450; amount raised from PCF, £395,295 (95%)

Proposed fee for 2014 is £450, remaining the same as the fee for 2013. Key drivers keeping the fee at the same level.

- Contribution to the Contingency Fund raised from £40 to £80

The reason given for this increase is that a complex and expensive notarial misconduct case in 2013 resulted in an unusually large call on the Fund. The result is that the balance of 94k on 31 December 2013 was reduced to 11k. The Master does not think the Fund can be viable without at least the increase to replace the money spent in 2013.

Recommendation

- That the application be approved
- That the approval letter comments on the doubling of the contribution to the Contingency Fund:
 - Recognises the reasons why an increase is necessary.
 - Records the LSB's concerns about the risk of future disciplinary cases requiring significant calls on the Fund.
 - Re-assured by the Master of the Faculties statement that it is exploring ways of ensuring that costs in future disciplinary cases are kept to more realistic levels while maintaining a process that is fair and accountable, both to complainants and the profession.
 - Expressing hope that the additional inspection powers which the Faculty Office now has will enable you to gather evidence which can inform the way in which disciplinary cases are managed and pursued in the future.

Part Two: Assessment of the application against LSB acceptance criteria

Pre-submission	
Were there any pre-submission discussions or a draft application; were any issues identified	No meeting or draft application
Were there any areas for improvement or specific issues in the last approval letter	<i>Last approval letter 26 July 2013</i> No comments were made for improvement. Indeed, the LSB recorded that we were pleased to see that the Faculty Office had responded to the challenges raised through the regulatory standards self assessment.
Developing the application and budget	

<p>Is it clear that the regulatory arm has led the development of the application?</p>	<p>The Faculty Office has no representative function and so the budget and application have been set by the regulatory arm</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> Is it clear how the budget has been arrived at Is there evidence that the immediate and medium terms needs have been taken into account 	<p>Yes. The Faculty Office expenditure for the financial years 2012 and 2013 was attached to the application and the items included in the 2013 expenditure reflect the nature of the expenditure the Faculty Office is likely to be made in 2014 and which was set out in the application.</p> <ul style="list-style-type: none"> Income forecast - £404,450 (2013 Actual: £409,495) Expenditure forecast of £402,811 (2013 Actual: £378,023); <p>The LSB is satisfied this information provides clarity on the budget.</p> <p>Yes. The PCF fee remains unchanged. The application explains that the budget relies on the assumption that the number of notaries re-applying for a PC will be slightly up on 2013. The information is derived from the numbers of individuals known to have passed the Notarial Practice course in summer 2014 and entitled to apply for admission, and from appointments and retirements in the course of the year.</p> <p>In addition, as the Faculty Office indicated in last year, it sought additional data from the profession. This confirmed that there was a significant degree of diversity of income between those whose principal or sole income is derived from their notarial practice and those for whom it is a bolt on to their solicitor practice. The Faculty Office say it is not yet persuaded that, despite this diversity of income, a practical and alternative variable fee structure could be introduced which would both be fair and acceptable to the profession.</p> <p>The budget covers the immediate costs of running the office and the contingency fund; medium term requirements (other than development referred to above) not specifically identified. The LSB is therefore satisfied that there is evidence that the</p>

<ul style="list-style-type: none"> • Are the contingency fund arrangements clear 	<p>immediate and medium term needs have been taken into account.</p> <p>Yes. The contingency arrangements are clear, however, there is a doubling of the contribution to the fund from £40 to £80. The application explains that for several years claims on the Contingency Fund have been low. However, in 2014 there was a particularly complex and expensive case which resulted in a significant claim on the Fund. It is the first time that a case has arisen with costs approaching that magnitude. The consequence of the case is that the balance has been reduced to just a little over 11k. The Master of the Faculties has assessed that the Fund cannot be viable without an input at least to replace the money spent, which the increased contribution of £80 would assist with. The Master is of the opinion that a similar level of contribution may be required in 2015/16, but with a hope of reduction in subsequent years.</p> <p>The Faculty Office also said it was exploring ways of ensuring that costs in future disciplinary cases are kept to more realistic levels while maintaining a process that is fair and accountable both to complainants and the profession.</p>
<p><i>Consultation</i></p> <ul style="list-style-type: none"> • Has the proposed fee been consulted on – if so summarise • Was the consultation clear about the level of fee and how it will be collected • Has feedback been fully considered 	<p>Yes. As in previous years, consulted with the two representative Societies (the Society of Scrivener Notaries and the Notaries Society) who in turn consulted with their membership. The joint registrars also attended a meeting of the Notaries Society Council in April 2014 to which they submitted a report including the PCF proposal for the coming year. The representative societies are provided with the accounts for the previous financial year, the budget for 2014 and a note of how the level of the fees has been determined.</p> <p>With respect to the Contingency Fund, the LSB was reassured that the stated aim of the Faculty Office of reaching and maintaining an appropriate level of Contingency Funding was not disputed in the consultation.</p> <p>The approach of consulting with the</p>

	<p>representative societies has been accepted before and is consistent with the LSB response document following the consultation on the s51 rules (September 2009).</p> <p>Within this context, the Legal Services Board is content with the consultation undertaken for this year's round.</p>
<p><i>Clear and transparent</i></p> <ul style="list-style-type: none"> • Is the information provided to fee payers on the level of fee clear and transparent • When was/is this issued to fee payers 	<p>Yes. The Faculty Office confirmed that as last year, once approval of the fee is granted an explanatory note explaining the changes will be published on the website and will be available on request. There will be reference to this explanatory note in the fee note issued to fee payers.</p>
Permitted purposes	
Is there evidence that the PCF income is used solely for permitted purposes	Master of Faculties has solely regulatory functions; all income allocated to permitted purposes.
Is any other income to be applied to permitted purposes	Yes. PCF income accounts for 95% of the total income. The balance of £9,155 comes from exam fees, exemption certificates and appointments. All income applied to permitted purposes.
Regulatory functions	
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	Master of the Faculties has solely regulatory functions; all income allocated to permitted purposes
Are any shared services clearly explained	No shared services
Regulatory and equality impact assessment (optional requirement)	
<ul style="list-style-type: none"> • Completed and included? • If not included, is there an explanation of the potential impact • Does the application contain commentary on the regulatory objective and the Better Regulation Principles 	<p>Application contains specific commentary that they do not see any impact on the diversity of the profession; in the absence of a variable fee a single flat fee is considered the fairest system.</p> <p>While light on detail, this degree of information is consistent with that provided on previous applications; recommend that this is sufficient</p>
Consultation with non-commercial bodies	
<ul style="list-style-type: none"> • Does the application include a description of the steps taken • Have the proposed fees been shared with such bodies • What was the response 	Not applicable; Faculty Office does not deal with non-commercial bodies
LSB Review	
Have we consulted with any other body on the application	No other consultation

Were any issues raised by LSB colleagues from the first review

Yes. Comments were received from both colleagues and a Board member in respect of the increase in contribution to the Contingency Fund. Concerns were raised about the nature of the disciplinary case that led to the unprecedented call on the Fund and what measures the Master of the Faculties would take in respect of disciplinary case handling to ensure that the risk of further large calls was kept to a minimum.

The LSB was re-assured by the statement in the application that the Master of the Faculties was exploring ways of ensuring that costs in future disciplinary cases are kept to more realistic levels while maintain a process that is fair and accountable, both to complainants and the profession.

We have recorded our concern in the decision letter but express our trust that the Master of the Faculties will address the risk from disciplinary cases and use their new inspection powers to inform management of that risk.

Paul Greening

15 August 2014