

Practising Certificate Fee (s51) application assessment

The Bar Council/Bar Standards Board PCF

Part A: summary and recommendation

Summary

The total PCF level for 2015/16 is £9.3m. This is down slightly from 2013/14 (£9.4m) (p2). Total budget income is £14.8m for anticipated costs of £13.4m (p10), leaving a £1.4m surplus.

The Bar Council expects to allocate 63% (£5.8m) of PCF income to regulatory activities and 37% (£3.5m) to other permitted purposes (p2).

The new income based methodology for the level of fee for individual barristers will be implemented for 2015/16.¹ It is anticipated that the average fee per barrister will stay consistent with last year - £602 compared to £607 in 2014/15.

The amount collected from individual barristers for the LSB/OLC levy will increase compared to previous years, from an average of £32 in 2014/15 to £57 in 2015/16 (the exact figure will be determined based on income). The increase is due to use of surplus to offset levy costs in previous years, rather than any significant change in the overall levy figure. The amount charged against the levy also includes a contingency of £0.04m, which will be held over and offset against future LSB/OLC recharges. During the assessment, The Bar Council agreed to clarify to those it regulates that it, rather than LSB, decides on the approach to collecting the cost of the levy.

Income from the Inns' subvention will reduce to £0.6m in 2015/16 and is expected to reduce further in 2016/17, ending completely in March 2017. This income is entirely allocated to BSB and it is anticipated that the shortfall caused by the reduction will be met by income from other sources, rather than an increase in PCF.

Recommendation

That the LSB approves the application and that the decision letter notes:

- the changes The Bar Council has made to how it will present information about the levy
- the improvements made to the consultation process.

Part B: Assessment of the application against LSB acceptance criteria

1. Pre-submission	
1a) Were there any pre-submission discussions or a draft application; were any issues identified	No. However, we received one query from The Bar Council in advance of submission of the application, regarding the lack of explicit consultation on allocating the LSB/OLC levy in line with the new methodology. LSB satisfied that this was not necessary, given that the new approach was a change to how The Bar Council

¹ In October 2013, LSB approved changes to the methodology for allocating PCF for barristers, from years of call to income bands. LSB's decision notice for the change available at: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20131014_decision_notice_final.pdf

	<p>allocates the whole PCF, of which the levy is one part.</p>
<p>1b) Were there any areas for improvement or specific issues in the last approval letter</p>	<p>Yes. There were several matters raised in last year's letter:</p> <ul style="list-style-type: none"> - We stated that The Bar Council should consider how it will evidence its use of PCF for non-regulatory permitted purposes in future applications to us. We followed up on this subject with a letter to all regulators in March 2014. See 3a below for further details. - We considered that the explanation provided to fee payers about the cost of the LSB/OLC levy was unclear in the application submitted. This was revised to make clearer that a large rise had been due to use of surplus the previous year. However, we have again this year, asked The Bar Council about how it presents levy figures (see 2h below). - We asked to be kept updated on The Bar Council's plans to review the level of all charges that make up the directly attributable income. An update was included in the letter from The Bar Council of 28 May 2014. This stated that revised management accounts were introduced in June 2014 to better monitor income. As part of this assessment process, we asked for a further update on this review (see 3b below). - We had expected the methodology for calculating the PCF based on income to be implemented so commented on this in our decision letter. This has now been introduced for 2015/16. - We stated that The Bar Council and the BSB should review how they engage with the profession in the development and setting of the PCF. The Bar Council has responded positively to this suggestion and provided an update on its plans for consultation in a letter to us in May 2014 letter. The approach

	<p>taken to consultation about the 2015/15 PCF is set out at 2e-2g below.</p> <ul style="list-style-type: none"> - We confirmed that one of the actions of the LSB’s 2013 investigation into The Bar Council could be closed. This was an undertaking to ensure that the funding of the process whereby a barrister can complain about unpaid fees will only be via the PCF.² This was not reflected in the original 2013 PCF application but rectified as part of the assessment process. The 2015/16 application states at p23 that the operation of the Withdrawal of Credit Scheme for fee disputes between solicitors and barristers is funded entirely by PCF.
2. Developing the application and budget	
<p>2a) Is it clear that the regulatory arm has lead the development of the application?</p>	<p>No. The application process is led by The Bar Council. However, we are satisfied that BSB has led in the development of its budget. The BSB Board approved the 2015/16 budget based on its three year strategic plan and annual plan. The budget was then considered by the Finance Committee and The Bar Council and approved without amendment (p15).</p>
<p><i>Budget</i> 2b) Is it clear how the budget has been arrived at 2c) Is there evidence that the immediate and medium terms needs have been taken into account</p>	<p>Yes. The Bar Council’s approach to developing the budget it set out in section 3 of the application.</p> <p>Yes. Section 4 of the application covers the approach taken to addressing short and medium term needs which will be met by the £1.4m budget surplus. These include:</p> <ul style="list-style-type: none"> - Funding the closed final salary pension scheme – an estimated £0.26m on top of existing provisions used this year is needed for three years to fully fund the closed final salary pension scheme. - Anticipated office move - £0.4m will be added to the fund being built up

² Full information about the investigation, including the Bar Council and BSB’s agreed undertakings, is available on the LSB’s website at:
http://www.legalservicesboard.org.uk/Projects/independent_regulation/investigations.htm

<p>2d) Are the contingency fund arrangements clear</p>	<p>towards the estimated £2m cost of the office move in 2019.</p> <ul style="list-style-type: none"> - Meeting reserve policy targets - £0.04m of the 2015/16 in year surplus is notionally ear marked for general reserves to top up to four months cover, in line with the reserves policy (see below). - General contingency (see below). <p>Yes. £0.7m has been allocated for general contingency (section 4). The application states that for the purposes of section 51 reporting requirements and PCF allocation, the amount is allocated and apportioned across the organisation’s cost areas. However, in practice the contingency is held centrally and distributed according to the budget management rules approved by the Finance Committee.</p> <p>This approach is in line with The Bar Council’s response to our March 2014 letter, in which we asked The Bar Council how it is assured itself that any underspend originally raised by PCF that ends up in reserves is subsequently spent on permitted purposes. In its response to that letter, The Bar Council stated that it had provided an analysis of its reserves to its Finance Committee showing how reserves have been built by funding source to provide assurance that reserves investment decisions are appropriate to the source of funding.</p> <p>The Bar Council’s reserves policy requires maintenance of a general level of reserves at the higher of £3m or four months operating costs.</p>
<p><i>Consultation</i> 2e) Has the proposed fee been consulted on – if so summarise</p>	<p>Yes. Section 5 of the application sets out in detail the approach taken by The Bar Council to consultation. The consultation exercise sought to increase engagement with the profession about the budget and PCF compared to previous years. As well as a consultation paper, The Bar Council’s approach included:</p>

<p>2f) Was the consultation clear about the level of fee and how it will be collected</p> <p>2g) Has feedback been fully considered</p>	<ul style="list-style-type: none"> - presenting the proposals to over 20 chambers and holding Q&A sessions for over 160 attendees - webinar presentation by the Treasurer and Treasurer-elect - encouraging direct engagement from Bar Council representatives with their constituencies. <p>Yes. The consultation paper and webinar provided detail about the total budget, the PCF levels that had been set and the apportionment between regulatory and other permitted purposes.</p> <p>Yes. 47 responses were received (p9) – this was a significant increase on last year’s consultation which did not garner any responses. No comments or challenges were made about the level of the PCF proposed, although concerns were expressed about the total cost of regulation. During the assessment process we asked, and The Bar Council agreed, to feed these comments in a suitable format into our work on the cost of regulation.</p>
<p><i>Clear and transparent</i></p> <p>2h) Is the information provided to fee payers on the level of fee clear and transparent</p> <p>2i) When was/is this issued to fee payers</p>	<p>Yes. Information about the level of fee was provided to fee payers as part of the consultation exercise, undertaken in November 2014. The consultation paper included a breakdown of The Bar Council’s budget and the level of fee for each income band. Communications about authorisation to practice have started and, subject to LSB approval of the PCF, the renewal window will open on 2 February 2015.</p> <p>During the course of our assessment we suggested to The Bar Council that the way in which it presented figures about LSB/OLC levy in its application and communications with the profession might risk creating the impression firstly that LSB/OLC costs were rising more than they are and secondly that LSB/OLC was charging a specific fee. The Bar Council agreed to amend its guidance notes to clarify:</p>

	<ul style="list-style-type: none"> - that it is a Bar Council, rather than LSB decision to charge barristers for the levy separate to PCF - that LSB/OLC charges are in line with previous years and so the fee increase is due to The Bar Council's historical actions (ie over collections and use of surplus) - that additional funds will be collected against the levy for contingency against the new fee arrangements.
3. Permitted purposes	
<p>3a) Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes. All PCF income has been allocated to a permitted purpose activity. The Bar Council has provided a detailed breakdown (p18) of all of its work 'themes' and apportioned its work by permitted purpose. This follows a review of non-regulatory activities to assess the extent to which they are permitted purposes. In 2014/15, The Bar Council undertook a restructure of the representation function and to create a clearer split between representative activities and member services.</p> <p>In our March 2014 letter to all approved regulators, we sought to understand how The Bar Council is assured about the process for PCF spend. As a result, The Bar Council has provided more information in the application to show a clearer alignment between the business areas purpose, scope and objectives and section 51 of the Act.</p>
<p>3b) Is any other income to be applied to permitted purposes</p>	<p>Yes. Table 7.1 on p15 shows other sources of income that will be applied to permitted purposes. This is shown as pie charts in the consultation paper.</p> <p>In total, 32% of BSB funding will be from other income sources. This income includes £2.1m from 'regulation' (areas such as exam fees), and £556k from the Inns. This amount continues a reduction in the Inns subvention, which is expected to reduce further in 2016/17, ending completely in March 2017.</p> <p>As part of the assessment process, we asked for an update on BSB's review of regulatory fees and charges. That review has now been completed. It considered whether all regulatory</p>

	<p>fees and charges were appropriate and looked at improving the transparency of pricing and achieving full economic cost recovery wherever the Board felt it appropriate. As a result of the review, BSB has made improvements to fee setting processes, which are kept under review by BSB's Planning Resources and Performance Committee.</p> <p>Non-regulatory permitted purposes are funded entirely by PCF (table 7.2 on p16).</p>
4. Regulatory functions	
4a) Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	<p>Yes. Table 7.2 on p16 shows a breakdown of regulation expenditure and shows how the £5.8m of PCF spent on regulation is applied to each area of regulatory expenditure (professional conduct, assessments, education and training, qualifications, regulatory policy, entity regulation, supervision and equality and diversity).</p>
4b) Are any shared services clearly explained	<p>Yes. An explanation of 'indirect costs' for BSB, which includes shared services, is provided (p14). This sets out the provisions made in BSB's budget for office support, contingency and other shared liabilities and provisions. Table 7.1 on p15 shows a breakdown of funding for shared and central costs and provisions split across BSB, 'approved regulator' and representation (including permitted purposes). The cost of BSB's contribution for the resources group is £2.4m.</p>
5. Regulatory and equality impact assessment (optional requirement)	
<p>5a) Completed and included?</p> <p>5b) If not included, is there an explanation of the potential impact</p> <p>5c) Does the application contain commentary on the regulatory objective and the Better Regulation Principles</p>	<p>Yes. A social impact assessment was undertaken in 2013 as part of the work to revise the methodology for charging the fee based on income. It states that the changes to allocation of PCF will have a neutral impact on the majority of the regulatory objectives, and that an income based model of charging PCF will have a beneficial impact on diversity.</p>
6. Consultation with non-commercial bodies	
<p>6a) Does the application include a description of the steps taken</p> <p>6b) Have the proposed fees been shared with such bodies</p> <p>6c) What was the response</p>	<p>No consultation with non-commercial bodies.</p>
7. LSB Review	

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7a) Have we consulted with any other body on the application	No
7b) Were any issues raised by LSB colleagues from the first review	The key concern raised by LSB colleagues was about presentation of levy figures. This was resolved by changes to how The Bar Council presented information about the levy (see 2h above).

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January 2015