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10 February 2016

Dear Stephen,

Approval of 2015/16 Practising Certificate Fee (PCF) application made by The Bar Council to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007

After careful consideration, the 2016/17 PCF levels set out in The Bar Council's application dated 4 January 2016 have been approved by the LSB.

We are content that the further information provided meets the criteria set out in the LSB's Practising Fee Rules 2009.

In reaching our decision, we have the following observations which we hope you will take into account in future applications:

Increase in PCF by 1.25%

While the increase is small in absolute terms, it is nonetheless contrary to the expectation that the costs of regulation should, at this time, be going down, not up. In assessing PCF applications the LSB must have regard to the regulatory objectives and best regulatory practice. To that end, we needed to understand the evidence base and rationale for an approved regulator's proposal to increase the PCF level and consequently requested additional information from the Bar Council.

Bar Council/BSB rationale for the increase

Further information was submitted by the Bar Council that set out in detail the main reasons for the increase. In summary, the governance process was explained,

including the full engagement of the Bar Council Finance Committee (which has equal representation from the BSB and Bar Council alongside independent members). It was further explained that the Finance Committee undertook a three year financial review for 2016-2019, which included a review of the outcomes of the new basis for the PCF setting; the extent to which future PCF collections might be affected by changes in barrister earnings; and a review of the Information Management programme to implement investment in business change and system replacement for regulatory function. This review was in the context of the BSB and Bar Council's latest three-year cost and non-PCF forecasts.

The main outcomes from the Bar Council/BSB review were set out, which were that:

- The PCF income needs to increase over the next three years, to ensure that there is sufficient financial resources cover to meet the relevant obligations.
- The increase is in the context of the three year financial plan and designed to ensure that the organisation meets the operational needs of the BSB and Bar Council and fund its obligations toward the now closed defined benefit pension scheme and the office move required by 2019. These items will cost approximately £3m between 2016/17 and 2018/19 with £2m costs expected in 2018/19.
- Although some of the costs could be met by reserves, it is necessary to build surplus over time to ensure that financial risk is minimised and there are sufficient cash and reserves to sustain normal business operations.
- The Finance Committee agreed the preference that the PCF increase should be spread out in small increments rather than a single large increase.
- Bar Council financial reserves are to be used to help absorb significant financial swings in any one financial year, to help minimise impact on the PCF.

LSB assessment

It was very helpful to see and understand this background and rationale. We understand how the Bar Council/BSB is attempting to minimise the impact on the PCF of the reduction in funding from non-PCF income, by partially funding this deficit from reserves. We also acknowledge that the increase takes place in the context of the Bar Council/BSB three year strategy and investment programme. We welcome the Bar Council/BSB assurance that it anticipates that the outcome of this investment will be to reduce costs and for this to ultimately have the impact of putting downward pressure on the PCF in the medium to long term.

While the LSB approves the application for this year on the basis of this additional information and contextual explanation, we remain of the view that the general trajectory of regulatory costs should be down. It would be helpful if, in its application for 2017/18, the BSB/Bar Council could provide more evidence and specific details of how it will endeavour to reduce the PCF levels going forward. This should be linked to its plans to improve efficiency and reduce costs (for example, in respect of

accommodation and other group resources) in the coming years. We would hope that by 2017 the Bar Council and BSB will be in a better position to gauge the impact of the new investments and budget on the PCF in subsequent years.

Transparency of information

We asked in the assessment process for further information about the allocation of funds to the Resources Group that serves both the Bar Council and the BSB, and how the additional funds from last year's PCF was used.

With respect to allocation of resources it was explained that the Resources Group costs include the true shared overheads of the business (for example, rent and common support functions), specific services focused on a particular business area and project costs (whether shared or dedicated). Costs are allocated or apportioned at the year-end to individual business teams (for example, Education and Training or Supervision) and then aggregated up into business groups (for example, BSB or Representation) for reporting purposes under s 51 of the Legal Services Act 2007.

In regard to the collection of actual funds in 2015/16, which turned out to be higher than the initial budget, we understand that the forecast position is for a projected loss in 2015/16. The additional PCF collections for 2015 will be recorded as a positive effect on the PCF reserves but will be offset by the negative effects of the shortfall in BSB Fees and Charges income and the share of overheads that is charged to permitted purposes (both regulatory and non-regulatory).

LSB assessment

It was informative to see how the Resources Groups funds were allocated, as well as to know how the additional monies collected in 2015/16 were used. It is important that the regulated community, as well as the LSB, know how money is apportioned and what happens to any such additional monies that are collected, particularly as this has an impact on the overall budget and therefore decisions about the level of PCF. For the purpose of openness and transparency, we encourage the Bar Council/BSB to provide much greater information, in a form that is clear and easy to understand, of income and spending and the general movement of the budget over time.

It would help with our assessment of future PCF applications if the Bar Council were to provide a table in the application itself that illustrates clearly the actual spend for the previous year against what was forecast, and the budget for the forthcoming year to which the PCF application applies. Information in the application could also include the allocation of resources across shared services, the allocation across permitted and non-permitted purposes and the uses of any additional collection. Perhaps our respective staff could work together in the pre-application stage for next

year's PCF to ensure that the Bar Council/BSB is clear about what the LSB expects by way of content in the application and how that content is presented.

I am very grateful to David Botha for all his work with my team during the assessment process, for providing the additional information and taking us through the detail.

I have sent a letter, in identical terms to Vanessa Davies, Director of the Bar Standards Board (BSB), and we will publish a copy of each letter on the LSB's website in the next few working days.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Neil Buckley', with a long, sweeping underline that extends to the right.

Neil Buckley
Chief Executive

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