

The Faculty Office

Part One: Summary and recommendation

Summary

- Total budget for 2016 is £422,650; amount to be raised from PCF, £388,900 (Approximately 92%)
- Proposed fee for 2016/17 increased from £450 to £490.
- Contribution to the Contingency Fund is reduced from £80 to £30

The net overall authorisation cost is reduced by £10.

Recommendation

- The application be approved
- The approval letter:
 - Notes the small reduction in the overall cost of authorisation resulting from the reduction in the contribution to the Contingency Fund. Record that we anticipate that now the changes to its discipline procedures are in place, with the aim of reducing the risk of significant calls on the Contingency Fund, contributions will remain stable or be reduced further.
 - Notes that this is the first increase in the PCF element of the overall authorisation costs for three years, record, however, that consideration of the application was lengthened because it did not include the additional information required when there is a proposed increase in PCF.
 - Mentions the PCF increase is against the background of the cost of regulation being a key focus for the LSB and contrary to our expectation that the costs of regulation should, at this time, be going down, not up.
 - Makes clear that the LSB expects all approved regulators, including the Faculty Office, to address all the requirements in the PCF rules, including rules 11b and 11c in relation to forecasts where the proposal is to increase PCF, which the Faculty Office was unable to provide this time. Record that we look forward to receiving these forecasts if PCF increases are proposed in the future.
 - Notes that annual income to cover the Faculty Office Legal Services Act regulatory matters has in effect been collected in arrears and that the Faculty Office would like to move to a model where the income is collected to meet anticipated expenditure for the year. Record that while we recognise that the Faculty Office is moving to a new funding model, this should not be the only determinant for setting the level of PCF.
 - Asks that the Faculty Office provide full information on responses to its consultations in future and that it reconsiders its approach to consulting exclusively with the societies, to a more open and public consultation, including with notaries directly where, for example, the intention is to increase PCF.

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	<p><i>Last approval letter 21 July 2015</i></p> <p>Commented that the LSB welcomed the proposal to maintain the level of PCF and contribution to the Contingency Fund at the same level as for 2014/15.</p> <p>Noted the action that the Master of the Faculties is taking to implement changes to its discipline procedures with the aim of reducing the risk of significant calls on its Contingency Fund</p> <p>Stated that the LSB is encouraged that the Master of the Faculties hopes to be in a position to reduce the level of contributions to the fund in future years, but that if it cannot do so, the LSB expects a detailed explanation as to the reasons in its 2016/17 application, and a clear indication of when the Master of the Faculties considers it might be able to reduce the level</p>
Developing the application and budget	
Is it clear that the regulatory arm has led the development of the application?	The Faculty Office has no representative function and so the budget and application have been set by the regulatory arm.
<p><i>Budget</i></p> <ul style="list-style-type: none"> Is it clear how the budget has been arrived at 	<p>Yes. The Faculty Office expenditure for the financial years 2014 and 2015 was attached to the application (Annex 2). Items included in the 2015 expenditure reflect the nature of the expenditure the Faculty Office is likely to make in 2016, and which was set out in the application.</p> <ul style="list-style-type: none"> Income forecast 2016 - £422,650 (2015 actual: £387,312) Expenditure forecast 2016 - £409,155 (2015 actual: £367,916 – note: retainer due to the Master of the Faculties £11,676)

- Is there evidence that the immediate and medium terms needs have been taken into account

Yes, with further information provided. While the LSB was satisfied that the application outlined the overall budget, it did not supply sufficient detail on why there was a need to increase PCF to the level proposed. We therefore requested further information.

The Faculty Office sent budget comparison figures showing the projected surplus/loss anticipated if it were to set the PCF at illustrative levels:

- A no change in PCF at £450 budget would have resulted in a projected loss of £18,105.
- A budget assuming a PCF of £470 would have resulted in a projected loss of £2,305.
- A budget assuming a PCF of £480 would have resulted in a projected surplus of £5,025

The proposed figure of £490 gives a projected surplus of £13,495.

The Faculty Office explained that it has historically collected most of its annual income to cover its Legal Services Act regulatory matters (“regulatory arm”) in arrears. While, according to the Faculty Office, this has the advantage of making the budgetary forecast for its financial year reasonably accurate (as many of the bulk of the budgeted expenses will be known, and in many cases already paid out) it also means that it is reliant on historic funds held by the Faculty Office to fund capital requirements for its regulatory arm, until the PCF is collected each year. It has indicated a preference to move to a model where the income is collected to meet anticipated expenditure for the year. To work towards this it is taking an approach to the budget so that it has what it terms a ‘reasonable’ annual surplus each year with a view to building up its working capital requirement for its regulatory responsibilities over a number of years.

We have commented on the approach to PCF levels in the decision letter (see recommendations section).

Are the contingency fund arrangements clear?

Yes. The contingency arrangements are clear and set out in Annex 3 to the application. The application explains that for several years claims on the Contingency Fund were low. However, over the past three years, there have been a small number of relatively low claims on the Fund and one very significant one. The application states that the Faculty Office now has new disciplinary rules in place and related Costs Order which is intended to avoid a repeat of the significant costs expenditure in the event another major disciplinary case comes to the Court of Faculties. The application confirms that the Master has been able to reduce significantly the contribution level from £80 for the past two years to £30 as the Contingency Fund reserve is thought to be sufficient in order to provide for extraordinary expenditure on disciplinary matters from time to time.

If the proposal is to increase the PCF, does the application include a forecast budget for the current application and, where available, the next three years and estimate of PCF for the next three years.

No. Further information was provided by the Faculty Office, explaining why this information was not available. The Faculty Office collects most of its annual income on regulatory matters in arrears. Whilst this has the advantage of making the budgetary forecast for its financial year reasonably accurate (as many of the bulk of the budgeted expenses will be known, and in many cases already paid out) it does mean that it is reliant on historic funds held by the Faculty Office rather than funds raised specifically by its regulatory arm. The financial reporting and budgeting arrangements operated by the Faculty Office is therefore that the budget covers the current financial year and is prepared (or finalised) mid-way through that year so that many of the likely expenses for the year are known and even expended. The Faculty Office do not forecast future budgets. In moving to a position in which the budget is fully a forecast for a forthcoming year (or even three years hence) there will be a much greater degree of unknown factors which might impact on that budget.

The Faculty Office said that with a small profession, and the PCF paid representing the significant proportion of the annual income of the Faculty Office, it would only require a relatively small fluctuation in the numbers

	<p>applying for a practising certificate to have a major effect on the income stream. The indications are that numbers are remaining relatively stable based on the number of applications for entry onto the Notarial Practice Course at UCL and the recent level of those retiring or otherwise ceasing practice. However, whilst the number of new admissions might be ascertainable up to two years ahead, the Faculty Office does not generally receive advance notice of retirements.</p> <p>In addition, whilst the Faculty Office know, and is budgeting for, a significant amount of staff time in respect of the work involved in preparing proposals for the Master of the Faculties to be authorised as a regulator of entities which may well take it to the end of 2017 and beyond, it is not clear what other matters might come into play which may impact on the work of the Faculty Office. For example, the Faculty Office cited the uncertainties surrounding the impact of Brexit.</p> <p>While the Faculty Office was unable to provide information required in respect of forecast budget and PCF, as a result of LSB enquiries it has provided an explanation as to why it was unable to do so on this occasion.</p> <p>The LSB has commented in its decision letter (see recommendations section) on the need for the Faculty Office to provide forecasts in the future, if the proposal is to increase the PCF.</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, the Faculty Office consulted with the two representative Societies (the Society of Scrivener Notaries and the Notaries Society) who in turn consulted with their membership. The Society of Scrivener Notaries and the Notaries Society together represent about 97% of the practising members of the profession. The Joint Registrars also attended a meeting of the Notaries Society Council in April 2016 to which they submitted a report including the PCF proposal for the</p>

	<p>coming year. The representative societies are provided with the accounts for the previous financial year, the budget for 2016 and a note of how the level of the fees has been determined.</p> <p>The LSB requested further information on responses to the consultation. The Faculty Office confirmed that whilst there is no written response to the consultation from either society, the Notaries Society Council did take the opportunity to question Faculty Office staff in detail on the accounts and budget. Much of the discussion was around the nature and level of the Management Charge – this is the payment which the Faculty Office makes to the solicitors' firm whose offices it shares which covers the Faculty Office share of the building and office expenses (shown as indirect expenses in the accounts) and the salaries of jointly employed staff. The Faculty Office reported there was broad acceptance that these costs would be likely to be significantly higher if the Faculty Office maintained its own self-contained offices in London and without the benefit of jointly employed staff.</p> <p>The approach of consulting with the representative societies has been accepted before and is consistent with the LSB response document following the consultation on the s51 rules (September 2009) that consultation should be proportionate.</p> <p>Within this context, the Legal Services Board is content with the consultation undertaken for this year's round. However, the LSB has requested that the Faculty Office reconsider its approach to limiting its consultation with the societies (see recommendation section).</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 if the PCF is approved by the LSB, a letter will be sent to each notary with the renewal paperwork confirming that the practising fee has increased with a brief explanation and a further explanatory note that will be published on the Faculty Office website.</p>

Permitted purposes	
Is there evidence that the PCF income is used solely for permitted purposes	Master of Faculties has solely regulatory functions for the purposes of the PCF; all income allocated to permitted purposes.
Is any other income to be applied to permitted purposes	Yes. PCF budgeted income for year-end 31 December 2016 accounts for about 92% of the total budgeted income. The balance of £33,750 comes from appointments, exam fees, notarial qualification information packs, and certificates of exemption. 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	Apart from some activities in relation to its work to the Archbishop, it is mostly engaged in regulatory functions; all income allocated to permitted purposes. It has no representative role.
Are any shared services clearly explained	No shared services with a representative body, so no representative independence issues raised with regard to 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 objectives and the Better Regulation Principles 	<p>The Faculty Office records in the application that it has opted for a fixed practising fee, as it is not persuaded that there is any practical alternative it could introduce that would be both fair and acceptable to the profession, which at the same time not being a disproportionate exercise to calibrate notarial fees on some form of means tested basis.</p> <p>The application contains specific commentary that the Faculty Office does not consider that the level of the fees will have an adverse impact on the diversity of the profession or those seeking to enter the profession. It adds that without a variable fee it would not be possible to effect a system which is any fairer than requiring a single fee for each notary.</p> <p>There is no specific commentary on the regulatory objectives and the Better Regulation Principles.</p>

	While light on detail, this degree of information is consistent with that provided on previous applications; we recommend that this is proportionate.
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	<p>Yes. One additional matter was raised in respect of notarial surplus/shortfalls from 2011 to 2015. The noted that the retained surplus for 2015 is £56,249, with £24,000 of this to pay for inspections. This raised two questions:</p> <p>Is it known how much of the £24,000 has, or will be spent on inspections? And what happens to the £32,249 accumulated surplus?</p> <p>The Faculty Office explained that In each of the years 2013, 2014 and 2015 it budgeted for £15k to cover the cost of inspections (both the fee paid to the inspectors and their travel/accommodation expenses). In fact nothing was spent in 2013; in 2014 £10k was spent; and in 2015 £11k. This resulted in the current accumulated under-spend of £24k. However, the Faculty Office added that as it moves into entity regulation it is likely that the annual costs of the inspection regime may well increase (possibly significantly) and it was therefore decided prudent to maintain an earmarked surplus against future expenditure. The cost of the 2016 inspections has so far amounted to some £11k, meaning the 'surplus' at today's date effectively stands at £13k.</p> <p>The accumulated surplus is effectively the up-front capital funding for the running of the office. The regulatory arm of the office only has the current surplus and it is being spent now, or</p>

	<p>has already been spent on this year's costs (including inspections and the code of practice etc.)</p> <p>The LSB is content with this further information provided by the Faculty Office.</p>
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Paul Greening

12 August 2016