

By e-mail only

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12 August 2016

Dear Howard

### **Application under Section 51 of the Legal Services Act 2007**

On 1 July 2016 we received the Master of the Faculties application under Section 51 of the Legal Services Act 2007 seeking approval of the practising certificate fee (PCF) for notaries for the year commencing 1 November 2016.

I can inform you that the 2016/17 PCF, including the contribution to the Contingency Fund, has been approved. This decision has been made under the authority delegated to me as the Chief Executive.

We note the small reduction in the overall cost of authorisation resulting from the reduction in the contribution to the Contingency Fund. We said in our letter last year that the LSB was 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, so we are pleased that it has now been able to do so. We anticipate that now the changes to your 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.

We note that this is the first increase in the PCF element of the overall authorisation costs for three years. However, our consideration of your application was lengthened because it did not include the additional information we expect when there is a proposed increase in PCF. This is against the background of the cost of regulation being a key focus for us and contrary to our expectation that the costs of regulation should, at this time, be going down, not up. On 1 June 2016 we published revised Practising Fee Rules (which were consulted on between February and April 2016). This included new rules (11b and 11c) in relation to the information that is to be included in an application when it is proposed that the PCF is to

be increased. Such information was not included in the initial application so we could not fully understand the rationale for the proposed £40 increase in the PCF.

Additional information has been provided during the course of the assessment of the application which, in the interests of transparency, we have included in our published assessment of the application. I would particularly note the following points.

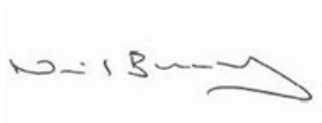
We note that annual income to cover the Faculty Office Legal Services Act regulatory matters has in effect been collected in arrears, based on the expenditure incurred in the previous year. You have indicated that your preference would be to move to a model where the income is collected to meet anticipated expenditure for the year. To work towards this you are taking an approach to the budget so that it has what you term a 'reasonable' annual surplus each year with a view to building up your working capital requirement for your regulatory responsibilities over a number of years. We recognise that approved regulators manage their budgets in ways that are appropriate to their circumstances, but in doing so we expect them to be mindful of the need to reduce the costs of regulation. The movement to a new funding model should not be the only determinant for setting the level of PCF.

You say you would have difficulty in providing information on three-year budget and PCF forecasts because of the way in which the budget is organised. In particular you say it is difficult to assess the impact of unknown future factors, such as fluctuation in numbers applying for a practising certificate, which could have a major impact on your income stream. Whilst the number of authorised persons may vary annually, we nevertheless expect 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.

While we appreciate that it is difficult to provide precise forecasts under your current budgetary arrangements, all approved regulators face challenges in providing forecasts. It should be possible for the Faculty Office to provide indicative forecasts based on assumptions. We look forward to receiving these forecasts if PCF increases are proposed in the future. We accept that developments may result in a variation between budget forecasts and actual figures over time.

Finally, I would like to make comment on the information provided on the consultation with the societies. While the application was clear in terms of how the consultation had been handled, it provided little information on the responses from the societies. You confirmed that while no written responses were made, the Notaries Society Council did take the opportunity to question Faculty Office staff in detail on the accounts and budget, focused primarily on the management charge for the shared offices. It would be helpful if in future applications more detail could be provided on the issues that emerge in the consultation and how you have responded to them. I know that in the past we have accepted the approach taken by the Faculty Office to consultation with the societies. However, I would ask you to reconsider this approach and whether there should be more open and public consultation, including with notaries directly where, for example, the intention is to increase PCF.

Yours sincerely

A handwritten signature in black ink, appearing to read "Neil Buckley", enclosed in a thin black rectangular border.

Neil Buckley  
Chief Executive

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Cc Neil Turpin, Clerk, The Faculty Office