

## The Bar Council/Bar Standards Board PCF

### Part A: summary and recommendation

#### Summary

The total PCF total collection target for 2016/17 is £11.3m. This is up slightly from 2015/16 (£10.8m). £10.4m is expected to be collected towards the 2016/17 operating budgets for Bar Council and BSB.

The Bar Council expects to allocate 65% (£6.8m) of PCF income to regulatory activities and 35% (£3.6m) to representative permitted purposes.

The fee for each income band will increase by 1.25% to meet financial needs (page 5). The LSB/OLC Levy, £755k, will be incorporated into the PCF for the first time, after the 1.25% increase is applied, rather than charged as a separate fee (£800k in 2015/16). The result of this is to dilute the fee increase so that the compulsory fee that is individual barristers' PCF contribution will rise from between 0.9% and 1.2% against the combine values paid in 2015. The table at page 5 sets out the increase for each band (e.g. Band 1 – from £109 2015/16 to £110 in 2016/17 and Band 6 from £1633 in 2015/16 to £1652 in 2016/17).

Income from the Inns' subvention reduced from £600k in 2015/16 to £250k in 2016/17.

#### Recommendation

That the LSB approves the application and that the decision letter comments on the three substantive matters raised in the assessment –

- The rise in PCF
- The comparison with previous years on the allocation of resources to the Bar Council/BSB shared services Resources Group
- How the surplus collection from 2015/16 was used

#### *Rise in PCF fee by 1.25%*

The Bar Council, in the further information provided, clarified the context of the increase, which was that it was against the background of a fall in non-PCF income, a three year review and investment in regulatory functions which in the medium to long term will have an impact on bringing costs down.

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. We commented 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.

#### *Allocation of resources and how the surplus collection from 2015/16 was used*

With respect to *allocation of resources* it was explained by the Bar Council 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). On the *how the surplus collection was used*, The Bar Council said that 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). With respect to both these issues, we recorded in the decision letter that it was 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 encouraged 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.

We also said that it would help with the LSB 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. We suggested that 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.

## 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	<b>Yes.</b> Draft application received. Preliminary discussion on timing of application but no issues identified in pre-submission stage.
1b) Were there any areas for improvement or specific issues in the last approval letter	<b>Yes.</b> Two issues: <ul style="list-style-type: none"> <li>• Presentation of LSB/OLC levy to regulated community. In 2015/16 there was an increase in the amount being collected against the levy due to collection of a contingency for the new fee methodology and the levy figures were presented to fee payers as a separate fee to the rest of the PCF. While in our decision letter we acknowledged that that this approach reflects the Bar Council way of accounting for the figures and collecting the levy, our decision letter also recorded the way in which the Bar Council presented the information in the application risked suggesting to fee payers that levy figures had increased more than they had and/or that LSB/OLC set a 'levy fee' for barristers. This issue does</li> </ul>

	<p>not arise this year as the levy element has been incorporated into the main PCF fee.</p> <ul style="list-style-type: none"> <li>The LSB welcomed the Bar Council's improvements it had made to communication of the fees and budget to barristers and the various ways in which the Bar Council had sought to engage with barristers. The LSB noted that the number of responses to the consultation had improved from the previous year.</li> </ul>
<b>2. Developing the application and budget</b>	
2a) Is it clear that the regulatory arm has led the development of the application?	<p><b>Yes.</b></p> <p>While the application process is led by The Bar Council, we are satisfied that BSB has led in the development of its budget and was properly represented within the Finance Committee determination of the overall budget for the organisation – the BSB has equal representation with the Bar Council alongside independent members. The BSB Board approved the 2016/17 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 (section 7 pages 9 and 10).</p>
<p><i>Budget</i></p> <p>2b) Is it clear how the budget has been arrived at</p> <p>2c) Is there evidence that the immediate and medium terms needs have been taken into account</p>	<p><b>Yes.</b></p> <p>The Bar Council's approach to developing the budget it set out in section 4 of the application.</p> <p><b>Yes.</b></p> <p>While the information was not included in the text of the application itself, section 6 refers to and includes a link to the budget proposals set out in the Bar Council consultation. This addressed short and medium term needs. They included:</p> <ul style="list-style-type: none"> <li>The need to meet costs arising from the expiry in 2019 of the lease on the Bar council's current office accommodation</li> <li>The estimated liability from the closed defined benefit pension scheme which materialises over the short to medium term.</li> <li>The cash required to manage other risks to income and expenditure</li> <li>Contingency (see below)</li> <li>Reserves are expected to fall slightly to £3.7m in 2015/16. The closing balance of reserves in 2014/15 was £4m. The Bar Council plans to use part of its reserves to manage the future liabilities highlighted earlier and to smooth the transition between the current cost base and the future lower cost base expected beyond 2018.</li> </ul> <p>The Bar Council provided additional information during the assessment process. Its medium term financial plan forecast assumes that the benefit from earnings growth received through the 2016 PCF is not lost in future years. There is a one</p>

<p>2d) Are the contingency fund arrangements clear</p>	<p>off benefit from removing the bulk payment discount arrangements and small fee rises which it aims to keep below c2% annually. The fee increases may be necessary to balance the effect of cost reductions in the BSB that lag sharper reductions in the regulatory fee and charges income (forecast in 2016 and beyond). The main features of the plan are:</p> <ul style="list-style-type: none"> <li>• PCF funded costs reduce from 2016 following inwards investments into systems and process reengineering during 2016-2018. These reductions peak in 2018 and remain embedded from that time.</li> <li>• These inwards investments of £2.2m over three years are mostly funded by PCF.</li> <li>• BSB non-PCF income continues to drop sharply and to lead cost reductions as the regulators strategic move towards risk based regulation is implemented.</li> <li>• Permitted purposes costs remain flat but a continuous increase in non-PCF funding is sought to mitigate the need for increased PCF for permitted purposes.</li> </ul> <p>The Bar Council expect that the costs of these areas will stabilise at the forecasted levels and non-regulatory income is planned to continue to grow to offset PCF needs. The outlook beyond 2019 will become clearer as the property strategy beyond the end of the current office lease is resolved and the future funding needs of the closed defined benefits pension scheme are understood.</p> <p><b>Yes.</b></p> <p>The application confirms that there will be a small contingency in the collection. The application states that the Bar Council is expected to collect £10.5m towards the £10.4m 2016/17 operating budgets for Bar Council and BSB, the balance being a small collection contingency. The contingency balance is £79k. The only other resource that the Bar Council has is the general reserves for the organisation, referred to on page 6 of the application, and are in order to absorb large unforeseen financial calls on costs that cannot be dealt with by cost reductions in-year.</p> <p>The reserves policy remains in place but will be reviewed from time-to-time to ensure that reserve levels and cash levels remain at satisfactory levels. The Bar Council's reserves policy requires maintenance of a general level of reserves at the higher level of £3m or four months operating costs.</p>
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<p><i>Consultation</i> 2e) Has the proposed fee been consulted on – if so summarise</p>	<p><b>Yes.</b> Section 5 of the application sets out in detail the approach taken by The Bar Council to consultation. The consultation built upon lessons learned from consultations in previous years. As well as a consultation paper, The Bar Council and BSB approach included:</p> <ul style="list-style-type: none"> <li>• BSB presenting and discussing the budget proposals with the Bar Council - budget proposals from all areas were presented to the Bar Council governing body.</li> <li>• Publication of papers describing the PCF and annual budget proposals on the Bar Council website drawing attention to the proposals via social media and emails to the whole profession.</li> <li>• Providing a survey to facilitate both structured and free text responses from the Bar, and drew attention to this in its regular communications with the profession.</li> </ul>
<p>2f) Was the consultation clear about the level of fee and how it will be collected</p>	<p><b>Yes.</b> The consultation paper provided information on the budget, the PCF levels that had been set and the apportionment between regulatory and other permitted purposes. A structured survey was sent to all barristers with an email address and inviting a combination of yes/no answers and qualitative responses regarding the PCF and budget proposals.</p>
<p>2g) Has feedback been fully considered</p>	<p><b>Yes.</b> The level of response was very low, half the amount compared to last year (21 as opposed to 42 for the 2014/15 application), but was considered by the Bar Council. The main qualitative comments, as expressed by 8 out of 14 respondents, was that costs should be further reduced to allow PCF to reduce.</p> <p>In addition, the 115 members of Bar Council were provided with the proposals and it was considered and discussed in a meeting on 7 November. Questions were raised on the risks inherent in the commercial proposals, the contingency plans that come into effect and the risks embedded in the defined benefit pension scheme. The minutes of the meeting were made available on the Bar Council website.</p>
<p><i>Clear and transparent</i> 2h) Is the information provided to fee payers on the level of fee clear and transparent; and 2i) When was/is this</p>	<p><b>Yes.</b> Information about the level of fee was provided to fee payers as part of the consultation exercise, undertaken in November 2015. 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 1 February 2016. However, see recommendation section on transparency.</p>

issued to fee payers																													
3. Permitted purposes																													
3a) Is there evidence that the PCF income is used solely for permitted purposes	<p><b>Yes.</b></p> <p>All PCF income has been allocated to a permitted purpose activity. The Bar Council has provided information in section 8 of the application on its allocation of PCF to permitted purposes. It confirms it has reviewed the representational activities of the Bar Council to determine the extent to which representative activities fall within the permitted purposes. Table 3 page 13 provides a breakdown of all the Bar Council’s representative permitted purposes activities and provides a breakdown by permitted purpose function area.</p> <p>The presentation of the representative permitted purposes has altered from the previous year’s application with less categories of function area and there was less detail on how the apportionments mapped across the different activities. In the assessment, the Bar Council explained that in 2014/15 it started a restructure of the Representation, Policy and Services functions which was completed in 2015 and changed the scope of activities undertaken by each. The Representation and Policy functions focus on permitted purposes activities that were most effective use of resources towards permitted purposes. Non-permitted purpose activities were either stopped or transferred out to our revised Services function. As a result the costs of the representation function have reduced £571k (down 13%) and as a result a greater proportion of the residual activity is permitted purposes. See Table 1 below.</p> <div><p><b>Table 1 - Makeup of Representation Costs and Funding (inc PCF % of total) 14/15 vs 16/17</b></p><table><tr><th>Period</th><th>Category</th><th>BC Representation costs</th><th>Overheads</th><th>PCF</th><th>Other Income</th></tr><tr><td rowspan="2">14/15</td><td>Costs</td><td>3,140</td><td>1,368</td><td></td><td></td></tr><tr><td>Income</td><td></td><td></td><td>3,641 (82%)</td><td>817</td></tr><tr><td rowspan="2">16/17</td><td>Costs</td><td>2,511</td><td>1,426</td><td></td><td></td></tr><tr><td>Income</td><td></td><td></td><td>3,687 (82%)</td><td>800</td></tr></table></div> <p>The LSB was unclear (in reference to table 3 of the application) as to what different permitted purposes were covered under the “approved regulator” and “representation” headings. The Bar Council confirmed that the distinction between approved regulator and representation is one made for its own purposes and reflects internal organisational structure and reporting differences, rather than any distinction in the type and nature of permitted purpose undertaken. The “approved regulator” heading represents the senior leadership team (Chairman, CEO and support staff) and the “representative” is</p>	Period	Category	BC Representation costs	Overheads	PCF	Other Income	14/15	Costs	3,140	1,368			Income			3,641 (82%)	817	16/17	Costs	2,511	1,426			Income			3,687 (82%)	800
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	the body of staff that undertakes the bulk of the permitted purposes work. The Bar Council has historically showed this distinction in its external annual financial reporting including the section 51 statement to assist its barrister stakeholders.
3b) Is any other income to be applied to permitted purposes	<p><b>Yes.</b> Table 5 on p15 shows other sources of income that will be applied to permitted purposes.</p> <p>In total, 15% of BSB funding will be from other income sources. This income includes £947k from 'regulation' (areas such as exam fees), and £250k from the Inns. This amount continues a reduction in the Inns subvention, which is due to end completely in March 2017.</p> <p>Table 5 page 15 of the application indicates that £243k of non-PCF funding is applied to non-regulatory permitted purposes.</p>
<b>4. Regulatory functions</b>	
4a) Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	<p><b>Yes.</b> £6.8 million of PCF income is applied to permitted purposes that are regulatory functions. The structure of the BSB operation is different from that in previous years. This follows a restructure of the operations within BSB including merging of teams and functions, the governance review, outcomes of changes discussed and/or driven by LSB and included in the BSB strategic plans.</p>
4b) Are any shared services clearly explained	<p><b>Yes.</b> An explanation of 'indirect costs' for BSB, which includes shared services, is provided in section 7, p9. This sets out the provisions made in BSB's budget for Resources Group costs that support BSB (e.g. office and IS costs), contingencies and other shared liabilities and provisions including the contribution or impact on services. Table 5 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 £3m.</p>
<b>5. Regulatory and equality impact assessment (optional requirement)</b>	
5a) Completed and included?	<b>No.</b>
5b) If not included, is there an explanation of the potential impact	<p><b>Yes.</b> The Bar Council considered the impact of the change in PCF on different component groups of the Bar. The 1.25% increase in fee levels has been applied to all income bands. In theory the Bar Council consider this has a disproportionately larger affordability impact on those in lower income bands against the higher bands. With BAME, disabled and female barristers representing a statistically greater proportion of those lower income bands than their overall representation within the profession, there may be a perception that those groups would be affected more significantly than other areas.</p>

5c) Does the application contain commentary on the regulatory objective and the Better Regulation Principles	<p>The absolute value of the increase for the lowest two incomes bands is £1 or £2 per annum and so is not regarded as a significant cost increase. Therefore, the LSB considers it a reasonable assumption by the Bar Council/BSB that there is a marginal adverse diversity impact of the change in PCF.</p> <p><b>No.</b></p>
<b>6. Consultation with non-commercial bodies</b>	
6a) Does the application include a description of the steps taken	No consultation with non-commercial bodies.
6b) Have the proposed fees been shared with such bodies	
6c) What was the response	
<b>7. LSB Review</b>	
7a) Have we consulted with any other body on the application	<b>No.</b>
7b) Were any issues raised by LSB colleagues from the first review	<b>Yes.</b> The substantive concerns raised by LSB colleagues from the first review were the increase in PCF fee, provision of comparative budgetary information in the application itself, and how the over collection from 2015/16 was used. The Bar Council response to these matters and the LSB assessment is dealt with in the Recommendation section in this assessment.

**Paul Greening**

**10 February 2016**