

## Practising Certificate Fee (s51) application assessment

**Approved Regulator: Bar Council/Bar Standards Board**

### Part One: summary and recommendation

#### Summary

The Bar Council/Bar Standards Board's application sought approval for increase of 12% to the Practising Certificate Fees (PCF) across all earnings bands. For the lowest band this would mean an increase to £123 from £110; for the highest band the increase would be to £1,850 from £1,652.

This level of increase is considered necessary to address the defined benefit scheme deficit. All of the increase will be allocated to the pension deficit.

Total PCF income for 2017 is budgeted at £12.344m split as follows

- Permitted purposes of Bar Council and BSB - £ 10.276m
- Legal Services Board/Office for Legal Complaints Levy – £0.768m
- Pension scheme deficit - £1.3m

BSB and Bar Council budgets for 2017/18 are £13.9m (2016/17 £14.3m). Budgeted PCF income for permitted purposes (excluding levies and pension deficit) for 2017/18 is approximately £10.3m this is in line with the amount collected in 2016/17 which was marginally lower than originally budgeted (£10.5m).

The BSB's total budget is £8.3m. Total income is budgeted at £8.133m of which £7.245m comes from PCF.

The Bar Council's budget is £5,616m. Total income is £5.555m of which £3.031m comes from PCF.

Bar Council/BSB plan to set PCF at the same level until at 2021 when the pension deficit is expected to be met; thereafter this element will be removed and PCF levels are expected to reduce.

#### Recommendation

That the application be approved. Although the proposal is for a significant increase in the PCF levels, the application contains a full explanation of the reason for this and makes clear that once the pension deficit has been addressed, then the total amount collected for PCF will reduce by £1.3m.

## Part Two: Assessment of the application against LSB acceptance criteria

1. Pre-submission	
Were there any pre-submission discussions or a draft application; were any issues identified	The application was discussed with the LSB a draft application was submitted for review. From the review of the draft, the LSB identified the information on reserves would benefit from further explanation; this was addressed in the final application.
Were there any areas for improvement or specific issues in the last approval letter	<p>The decision letter for the 2016/17 asked that the following be considered in future applications:</p> <ul style="list-style-type: none"> <li>• Provide more evidence and specific details of how it will endeavour to reduce PCF levels going forward. <i>In view of the significant increase now proposed this is not relevant to this application</i></li> <li>• Provide more detailed analysis of actual (forecast) in the current year compared to the budget for the forthcoming year to which the application relates <i>This information has been included in Tables 7 and 9</i></li> <li>• 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 <i>This information has been included in table 4 and 5 and accompanying narrative.</i></li> </ul>
2. Developing the budget and application	
Is it clear that the regulatory arm has led the development of the application?	<p>It is clear that the regulatory arm has developed its own budget and that the amount that the BSB proposed has been approved by its Board, through the usual governance processes.</p> <p>The Bar Council has taken responsibility for submitting the application and explaining the significant increase; on balance, we think that this is a reasonable approach in view of the fact that it is the Bar Council rather than the BSB that is responsible for the pension deficit.</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> <li>• Is it clear how the budget has been arrived at</li> </ul>	Yes; section 7 (pages 21 and 22) explains the process that has been followed.

<ul style="list-style-type: none"> <li>• Is there evidence that the immediate and medium terms needs have been taken into account</li> <li>• Are the contingency fund arrangements clear</li> <li>• 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.</li> </ul>	<p>Table 5 (page 12) is an indicative Financial Outlook to 2021/22 (which is expected to be the last year in which it will be necessary to include the pension deficit in the PCF calculation.</p> <p>Table 5 meets the requirement to provide a three year forecast where the proposal is to increase PCF.</p> <p>Reserves are used for any unexpected costs. Paras 3.1 to 3.6 on page 11 explain the expected position on reserves for the forecast period to 2021/11 and there is specific information in Table 5</p>
<p><i>Consultation</i></p> <ul style="list-style-type: none"> <li>• Has the proposed fee been consulted on – if so summarise</li> <li>• Was the consultation clear about the level of fee and how it will be collected</li> </ul> <ul style="list-style-type: none"> <li>• Has feedback been fully considered</li> </ul>	<p>Following discussions with the Bar Council (whose 115 members represent the profession), a four week consultation period started on 8 November 2016. The publication of the consultation was publicised in regular communications with the profession. In addition there was commentary on two legal press websites about the proposed increase.</p> <p>The consultation was clear about the proposed level of increase and the reasons for it. The fees will be collected in the normal way.</p> <p>Yes. There were 13 individual responses to the consultation and the application states that each endorsed the proposed course of action. None of the responses offered any alternative options for funding the pension scheme deficit. No changes were made to the proposed fee levels as a result of the consultation.</p>
<p><i>Clear and transparent</i></p> <ul style="list-style-type: none"> <li>• Is the information provided to fee payers on the level of fee clear and transparent</li> <li>• When was/is this issued to fee payers</li> </ul>	<p>The consultation paper was clear on the level of increase and the key driver for it.</p> <p>A communication plan is in place which uses a range of methods to prepare barristers for the annual renewal process. As part of the annual authorisation to practice process, individual fee notes are issued which clearly set out the level of the fee.</p>
<p><b>3. Permitted purposes</b></p>	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes. 70% of the PCF income (excluding levies and pension deficit) is allocated to the BSB which has regulatory functions. 30% is</p>

	allocated to the permitted purposes activities undertaken by the Bar Council. Section 9 and Table 11 is the Bar Council analysis of the non-regulatory permitted purposes that it undertakes.
Is any other income to be applied to permitted purposes	Yes. £1.1 m of other income (BSB £0.8m and Bar Council £0.25m) is used for permitted purposes (Table 12).
<b>4. Regulatory functions</b>	
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	BSB allocation of £7,245m of PCF income is clearly shown in Tables 7 and 12.
Are any shared services clearly explained	<p>The budget planning has considered the costs (staffing, operations and capital expenditure) of the functions that are shared between the Bar Council and the BSB.</p> <p>The total costs for 2017/18 are budgeted at £4,914, of which £3,043 is allocated to the BSB (Table 12). This is marginally lower than the 2016/17 forecast for the BSB (£3,200, Table 7)</p>
<b>5. Regulatory and equality impact assessment (optional requirement)</b>	
<ul style="list-style-type: none"> <li>Completed and included?</li> <li>If not included, is there an explanation of the potential impact</li> <li>Does the application contain commentary on the regulatory objective and the Better Regulation Principles</li> </ul>	<p>Section 10 summarises a social impact assessment that has been completed. The 12% increase could have a disproportionately larger impact in on the lower income bands. As BAME, disabled and female barristers are a statistically greater proportion of the lower bands and, therefore, may be affected more than others.</p> <p>However, the actual level of increase in the lowest two bands (£12 and £26) is not considered significant and therefore it is considered that any diversity impact would be marginal.</p>
<b>6. Consultation with non-commercial bodies (optional requirement)</b>	
<ul style="list-style-type: none"> <li>Does the application include a description of the steps taken</li> <li>Have the proposed fees been shared with such bodies</li> <li>What was the response</li> </ul>	No consultation with non-commercial bodies
<b>7. LSB Review</b>	
Have we consulted with any other body on the application	This was not considered necessary
Were any issues raised by LSB colleagues from the first review	Following review by LSB, we asked for an explanation as to what other options for raising the income needed to fund the pension deficit were considered.

	<p>Consideration was given to a lower PCF level but this it was concluded that this would have increased the risk over the longer-term and exposed the organisation to other regulatory risk since the contributions had been agreed. This also risked there being a shortfall in funding for the other permitted purposes.</p> <p>A higher contribution was also considered in order to collect the same amount over a shorter period but this was not pursued since it would have created too high a burden on practitioners.</p> <p>The BSB and the Bar Council have other sources of income but these are unpredictable and in the case of the BSB are expected to reduce sharply. There was not enough certainty that these income streams would raise sufficient additional funds.</p> <p>Finally, operational cost reductions were Considered. The BSB objected to this in principle and ultimately it was concluded that the level of reduction needed to be certain of generating sufficient funds would compromise the strategic needs of the BSB and the Bar Council.</p>
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**27 January 2017**