

The Faculty Office

Part One: Summary and recommendation

Summary

- Total budget for 2017/18 is £428,829 amount to be raised from PCF, £394,604 (Approximately 92%)
- Proposed fee for 2017/18 increased from £490 to £520.
- Contribution to the Contingency Fund is increased from £20 to £30

The net overall authorisation cost is increased by £40.

Recommendation

- The application be approved
- The approval letter:
 - Notes with concern that the changes to the disciplinary procedures did not seem to have the desired effect of reducing the risk of significant calls on the Contingency Fund or that contributions would remain stable or be reduced further.
 - Notes that this is the second increase in the PCF element of the overall authorisation costs and the LSB welcomes the inclusion of the required information regarding budgeting forecasting.
 - 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.
 - Notes that the Faculty Office has moved a model where the income is collected to meet anticipated expenditure for the year which has led to the discovery of a deficit owed to the non-regulatory Faculty Office business operations.
 - Welcomes that the Faculty Office has consulted directly with the notaries and representative societies on the proposed increase in PCF but ask again that they consider consulting in a more public way in the future (for example, by publishing proposals on your website). In addition, as we expressed in our decision letter on the 2016/17 PCF application, it would be helpful in future if more detail could be provided on the issues that emerge in the consultation and particularly how they have responded with any critical feedback.

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	<p>The Faculty Office submitted a draft application.</p> <p>A meeting was held at The Faculty Office on 9 August. We identified the following key issues:</p> <ul style="list-style-type: none">• That it would be helpful to include the proposals for entity regulation and any

	<p>potential related costs in the section on <i>Reasons for proposed fee and contribution</i>.</p> <ul style="list-style-type: none"> • In respect of the increase in contributions to the Contingency Fund and the explanation in the application provided; given the LSB's commentary about the Fund in our 2016 approval letter, it may assist the application if some reassurance was provided about the future trajectory of the Fund, now that the new disciplinary rules are in place. • The consultation section will need to be updated to reflect the conclusion of the consultation.
<p>Were there any areas for improvement or specific issues in the last approval letter</p>	<p><i>Last approval letter 12 August 2016</i></p> <p>Noted the small reduction in the costs of authorisation resulting from the reduction in the contribution to the Contingency Fund.</p> <p>Anticipate that now the changes to the Faculty Office 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.</p> <p>Notes that the required level of detail wasn't included in their application to increase the PCF which extended the time taken to come to a decision. In future the LSB expects a 3 year forecast if the proposal is to increase PCF.</p>
<p>Developing the application and budget</p>	
<p>Is it clear that the regulatory arm has led the development of the application?</p>	<p>The Faculty Office has no representative function and so the budget and application have been set by the regulatory arm.</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> • Is it clear how the budget has been arrived at 	<p>Yes.</p> <p>The MoF budget is based on:</p> <ul style="list-style-type: none"> • Income from practicing certificates and other income. • Levies for LSB, OLC and the Office of Professional Body Supervision (OPBAS)¹

¹ The levy for OPBAS is still under review

<ul style="list-style-type: none"> • Is there evidence that the immediate and medium terms needs have been taken into account 	<ul style="list-style-type: none"> • Expenditure on updates to the legal choices website as part of the CMA recommendations <p>The Faculty Office expenditure for the period 1 Jan 2016 to 31 Mar 2017 and 2015 was attached to the application (Annex 1). Items included in the 2016/17 expenditure reflect the nature of the expenditure the Faculty Office is likely to make in 2017/18, and which was set out in the application.</p> <ul style="list-style-type: none"> • Income forecast 2016/17 - £422,650² (actual: £488,514) • Expenditure forecast 2016 - £409,155³ (actual: £447,183 – note: retainer due to the Master of the Faculties £14,948) <p>Yes.</p> <p>The LSB was satisfied that the application outlined the overall budget and it provided a proportionate level of detail about proposed expenditure. In particular it outlined the two areas of new likely expenditure:</p> <ol style="list-style-type: none"> 1. Changes to the Legal Choices website which is required by the CMA recommendations 2. The levy required by OPBAS <p>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</p>
--	--

² This forecasted income was based on 12 months not the 15 months covered by the accounts

³ This forecasted expenditure was based on 12 months not the 15 months covered by the accounts

<p>Are the contingency fund arrangements clear?</p> <p>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.</p>	<p>capital requirement for its regulatory responsibilities over a number of years.</p> <p>We have commented on the approach to PCF levels in the decision letter (see recommendations section).</p> <p>Yes. The contingency arrangements are clear and set out in Annex 5 to the application. The application explains that the Contingency Fund exists to provide cover for costs arising from disciplinary cases which are otherwise not recoverable from the notaries concerned. For several years claims on the Contingency Fund were low. However, over the last three years there have been a small number of relatively low claims on the Fund and one very significant one.</p> <p>Yes.</p> <p>The Faculty Office sent forward look indicative budgets for the years ending 31 March for 2018, 2019 and 2020. The current intention is to not raise the PCF level in these years.</p> <p>On the basis of 780 certificates at £520 being issued every year the projected surplus is</p> <ul style="list-style-type: none"> • 2018 - £21,787 • 2019 - £32,400 • 2020 - £29,200 <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, it is not clear how that has been forecast or allocated.</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 	<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</p>

<ul style="list-style-type: none"> • Has feedback been fully considered 	<p>their membership. The Society of Scrivener Notaries and the Notaries Society together represent about 97% of the practising members of the profession. The Registrar attended a meeting of the Notaries Society Council in July to which he submitted a report including the practising certificate fee proposal for the coming year.</p> <p>The representative societies and profession were provided with the accounts for the previous financial year, the attached budgets (annex 2) and an indication of how the level of the fees has been determined. They were also provided the Core Metrics document in accordance with the costs transparency principles.</p> <p>The profession were invited to respond to the proposals via a SurveyMonkey questionnaire.</p> <p>The LSB welcomes the decision by The Faculty Office to consult more widely in sending the information to the entire profession. It would still be preferable that the consultation be published publicly.</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 profession (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 for the change.</p>
<p>Permitted purposes</p>	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Master of Faculties has solely regulatory functions for the purposes of the PCF; all income allocated to permitted purposes.</p>
<p>Is any other income to be applied to permitted purposes</p>	<p>Yes. PCF budgeted income for the financial year end 31 march 2018 accounts for about 92% of the total budgeted income. The balance of £34,225 is expected to come from</p>

	appointments, exam fees, notarial qualification information packs, and certificates of exemption. All income applies 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. This position is unchanged from last year.</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. This position is unchanged from last year.</p> <p>There is no specific commentary on the regulatory objectives and the Better Regulation Principles.</p> <p>While light on detail, this degree of information is consistent with that provided on previous applications.</p>
Consultation with non-commercial bodies	
<ul style="list-style-type: none"> • Does the application include a description of the steps taken 	Not applicable; Faculty Office does not deal with non-commercial bodies.

<ul style="list-style-type: none"> • Have the proposed fees been shared with such bodies • What was the response 	
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. Two matters were raised in relation to the application.</p> <ol style="list-style-type: none"> 1) It was queried how the Faculty Office had budgeted for the changes to the Legal Choices website. The Faculty Office outlined that the estimate was based on a comparative proxy which was another web platform it had created to search for notaries throughout the EU. 2) It was queried why the Faculty Office were unable to recover costs from the notary as a result of a disciplinary matter. The Faculty Office outlined that there were a range of factors that influenced that decision, primarily; that the notary was no longer practising, and the cost of the debt recovery would exceed the likely ability of the former notary to pay any costs. <p>The LSB is content with this further clarification provided from the Faculty Office.</p>

Craig Wakeford

31 August 2017