

Practising Certificate Fee (s51) application assessment

Approved Regulator: Bar Council/Bar Standards Board

Part One: summary and recommendation

Summary

No increase in the level of the fee – the Bar Council expects to meet regulatory and levy obligations from the existing level of PCF

Total PCF income is budgeted at 13,514m split as follows:

- o Permitted purposes of Bar Council and BSB - £11.42m
- o LSB/OLC Levy – £790k
- o Pension scheme deficit - £1.3m

BSB and Bar Council budgets for 2018/19 are £15.2m (2017/18 £13.9m); this is £1.3M higher than the current 2017/18 budget level. It specifies in the application that this will be funded by a £14.8M combination of PCF and non-PCF income. A £400k loss to be funded by reserves. Bar Council representative permitted purposes will be £3.0M (also £3.0M 2017/18 budget). The BSB regulatory purposes will be £7.2M (£7.3M 2017/18 budget).

Recommendation

That the application be approved. The decision letter will:

- Record that the LSB is pleased that the fee remains at the same level as the previous year and the Bar Council is aiming to keep it static for the next two/three years.
- Note the progress that has been made to address the deficit in the defined benefit pension scheme and that the Bar Council now has a plan and timescale to ensure that, once the pension deficit has been discharged, the £1.3m deficit will be removed from the PCF calculation.
- Acknowledge the additional information provided to address our questions regarding the allocation of PCF to permitted purposes (see section 7 of this assessment).
- Record that the LSB is content with the responses in terms of this assessment and approval of this year's fee, but that we may want to return, outside of the PCF process, to how the Bar Council allocates PCF to permitted purposes.

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 and a draft application was submitted for review. No significant amendments were suggested.
Were there any areas for improvement or specific issues in the last approval letter	<p>The decision letter for the 2017/18 application made clear that it was being approved on the understanding that once the Bar Council's pension deficit had been discharged, the £1.3m deficit will be removed from the PCF calculation.</p> <p><i>The 2018/19 application confirms that Bar Council aims to remove this £1.3M from the PCF altogether once the pension liability is discharged completely. The first stage of any reduction might be as early as 2020, subject to the current deficit being met but it expects some form of PCF arrangement to remain for perhaps 10 years.</i></p> <p>The 2017/18 decision letter also confirmed that the LSB would continue to focus closely on regulatory costs and that PCF should not be increasing but be going down when possible.</p> <p><i>The application for 2018/19 proposes no increase in PCF.</i></p>
2. Developing the budget and application	
Is it clear that the regulatory arm has led the development of the application?	<p>The regulatory arm has developed its own budget and that the amount that the BSB proposed has been approved by its Board, through its governance processes.</p> <p>The Bar Council has taken responsibility for submitting the application and explaining the decision to maintain the PCF at its current level.</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> Is it clear how the budget has been arrived at? Is there evidence that the immediate and medium terms needs have been taken into account? 	<p>Yes; paragraphs 22-24 explains the process that has been followed. 2018/19 operating costs will be level with those in the 2017/18 budget.</p> <p>Yes. The summary section (page 5), Financial Risks and Mitigating Steps section (page 10) and the Setting and Managing Budgets section (page 11), reflect the immediate and medium term needs that have been taken account of.</p>

<ul style="list-style-type: none"> • Are the contingency fund arrangements clear? <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>Table 6 (paragraph 20) presents an indicative Financial Outlook to 2020/21.</p> <p>Yes. With regards to contingency and reserves, paragraph 45 explains that the Bar Council maintains financial reserves to fund working capital, investments and to provide a financial damper to smooth or cushion adverse financial issues.</p> <p>The Bar Council also operates a reserves policy to maintain sufficient cash reserves for these purposes. Paragraph 46 further explains that shortfalls in funding or unplanned costs may, at the Bar Council’s discretion, be met by: designated PCF reserves (for PCF funded activities only); general reserves; cost reductions targeted at non-Permitted Purposes activities (enabling more commercially driven surplus to be put towards permitted purposes activities); cost reductions applied to Permitted Purposes activity (including its support costs) to reduce the need for PCF funding as agreed with BSB; and other options that will be considered to ensure best use of available cash resources during the year.</p> <p>Further details on reserves can be found in Table 4 – Report on 2018/19. The impact on the Bar Council’s reserves is shown in Table 6.</p> <p>The LSB raised issues in relation to PCF/non PCF income and reserves with the Bar Council in the course of its consideration of the application. The outcome of these enquiries is recorded in section 7 of this assessment.</p> <p>The proposal is not to increase PCF. Nonetheless the application included a table, Table 6 (referred to above) that presents an indicative Financial Outlook to 2020/21.</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>The consultation process is set out in paragraphs 58-61 of the application. The public consultation ran from 28 November to 20 December 2017. The consultation was</p>

<ul style="list-style-type: none"> Has feedback been fully considered 	<p>publicised in regular communications with the profession. In addition, there was commentary on two legal press websites about the proposed increase. In addition the proposal was discussed with the 115 members of the Bar Council.</p> <p>No consultation responses were received. While disappointing this is not unexpected given that there was no proposal to alter the level of PCF.</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>The consultation paper was clear as to the reasons for maintaining the PCF at its current level.</p> <p>A communication plan was underway from November and will continue through post, email and social media channels up to and beyond the opening of the Authorisation to Practise process on 1 February 2018.</p>
3. Permitted purposes	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes. Regulatory functions, non-regulatory permitted purposes and other purposes are shown in Table 4 of the application. Please see section 7 of this assessment with regards to further information requested and provided.</p>
<p>Is any other income to be applied to permitted purposes</p>	<p>Yes. Table 5 (page 5) gives an overview of the income and expenditure budget for 2018/19 which includes that total income is £8.377m, of which £7.220m is from PCF. Bar Council budget expenditure is £5.288m. Total income is £5.165m of which £2.968m is from PCF.</p>
4. Regulatory functions	
<p>Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions</p>	<p>Yes. Including paragraph 4, Bar Council representative permitted purposes will be £3.0M (£3.0M 2017/18 budget). BSB regulatory purposes will be £7.2M (£7.3M 2017/18 budget). Other regulatory funding is up £0.3M to £1.2M (£0.9M 2017/18 budget). 2018/19 operating costs are level with the 2017/18 budget.</p>
<p>Are any shared services clearly explained</p>	<p>Yes. The budget planning considered the costs (staffing, operations and capital expenditure) of the functions that are shared between the Bar Council and the BSB. Table 8 includes the</p>

	<p>shared overhead figures. Total shared overheads are £1.585m.</p> <p>Paragraph 32 explains that the direct expenditure budget of Bar Council will be £3.7M (£3.8M); £2.6M staffing and £1.2M non-staffing, and is £0.1M lower than 2017/18's budget plans. The Bar Council estimates that a further £1.6M (£1.9M) of shared overheads will be allocated to the Bar Council. The planned Representation budget is level with the 2017/18 budget.</p> <p>The application refers to the project to secure new shared office facilities following the lease expiry on current premises in 2018/19. £1.2M will be allocated in 2018/19 (nil 2017/18).</p>
<p>5. Regulatory and equality impact assessment (optional requirement)</p>	
<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 objective and the Better Regulation Principles 	<p>An Equalities Impact Assessment was included in the application, paragraphs 81-83. No major impacts were identified given that there is no change in PCF level.</p>
<p>6. Consultation with non-commercial bodies (optional requirement)</p>	
<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 	<p>No consultation with non-commercial bodies</p>
<p>7. LSB Review</p>	
<p>Have we consulted with any other body on the application</p>	<p>This was not considered necessary</p>
<p>Were any issues raised by LSB colleagues from the first review</p>	<p>Following review by LSB, we asked the following two questions with regards to use of PCF for permitted and non-permitted purposes. The Bar Council's response is shown set out below.</p> <p>1) The Bar Council plans to fund the £400k difference between the BSB/Bar Council budgets and PCF+non-PCF income by using its reserves. How this £400k 'loss' is split across regulatory functions, non-regulatory permitted purposes and other purposes is shown in Table 4 of the application, and the impact on the Bar Council's reserves is shown in Table 6. Table 4 shows that £32k of the 'loss' arises from other purposes i.e. things that should not be funded by the PCF. Our question was how can we be</p>

assured that funds raised from the PCF that have made their way into the Bar Council's reserve are not now being spent on non-permitted purposes?

The Bar Council responded that the assurance arises from the Bar Council's treatment, accounting and reporting of reserves of different types. The Bar Council distinguishes between permitted purposes reserves (arising from permitted purposes activities) and other general reserves and reports those reserves in the annual audited financial accounts: the permitted purposes reserves arise from the surplus or loss on any BSB regulatory activity (whether funded by PCF or not) and representative permitted purposes activity as included in the s51 report included in our accounts.

Movements in and between reserves are reported in the primary statements of the financial accounts, are audited independently and are subject to review by Finance Committee and Audit Committee for financial and process integrity respectively. The approved accounts are in the public domain on the Bar Council website.

2) Para 10 of the application says that 'all costs associated with the project to secure and operate a new office facility in 2018/19 are regarded as permitted purposes'. The LSB asked for further detail about this as: (i) table 4 shows that 10% of the Bar Council's costs of its representation activities are not permitted purposes (ii) para 10 of the application also states that 'allocation of operating costs for the new facility beyond 2018/19 will be apportioned between permitted purposes and non-permitted purposes on an appropriate basis'. **Our question was, if it is appropriate to apportion operating costs, why is it not appropriate to apportion the costs of the office move as well?**

The Bar Council responded that it reconsidered the treatment of the one-off costs and agreed that it will amend the treatment to be consistent with the other fully shared organisational operating and project costs.

	<p><i>Non-permitted purposes costs make up approximately 12% of total costs (excluding project costs). The effect of this amendment would be to move approximately £157k of the project value into non-permitted purposes creating equivalent movements in the respective reserves. The PCF allocation would be amended pro rata. The Bar Council advised that this has no effect on the overall PCF levels nor the overall deficit in the year.</i></p> <p>The LSB is satisfied with these responses and the adjustments referred to. However, it may in due course and outside of the PCF process, seek further information from the Bar Council as to how it apportions PCF between permitted and non-permitted purposes.</p>
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Paul Greening
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24 January 2017