

Practising Certificate Fee (s51) application assessment

The Faculty Office

Part One: Summary and recommendation

Summary

- Total budget for 2018/19 is £457,166, amount to be raised from PCF is £414,521 (Approximately 91%)
- Proposed fee for 2017/18 maintained at £520.
- Contribution to the Contingency Fund is increased from £30 to £40

The net overall authorisation cost is increased by £10.

Recommendation

- The application be approved
- The approval letter:
 - Welcomes that the PCF will be maintained at the same level. Reminds that as always, the cost of regulation continues to be a key focus for the LSB and our expectation is that approved regulators should be taking steps to deliver reductions in fees while maintaining high regulatory standards.
 - Notes the continuing significant calls on the Contingency Fund as a result of disciplinary proceedings. Reminds the Faculty Office of previous LSB concerns about these increases. Therefore welcomes the reassurance made during the assessment that there should be no further significant expenditure as a result of proceedings, and that once the fund is maintained at around £100,000 the Faculty Office will aim to reduce the level of contributions.
 - Notes that the Faculty Office has reduced the deficit owed to the non-regulatory Faculty Office business operations from £208,000 to £198,000. The LSB would welcome further updates on this and updated estimates as to when this deficit is expected to be reduced to nil.
 - Welcomes that the Faculty Office has consulted directly with the notaries through the representative societies on the proposed increase in PCF. We have asked previously that the Faculty Office consider publishing proposals on its website for wider transparency and ask again to consider this for next year.
 - Grateful of the further information the Faculty Office has provided to us in the course of the assessment confirming how the consultation responses have been taken into account. We have expressed in previous decision letters it would be helpful if more detail could be provided in applications on the issues that emerged in the consultation and particularly how the Faculty Office has responded to 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	N/A
Were there any areas for improvement or specific issues in the last approval letter	<i>Last approval letter 1 September 2017</i>

	<p>Noted the PCF element had increased for two years in a row.</p> <p>Noted with concern that the changes to disciplinary procedures did not seem to have stabilised or reduced contributions to the Contingency Fund as the Master had anticipated. We accepted a £10 increase the previous year but specifically stated that we anticipated contributions to remain stable or be reduced further.</p> <p>Noted an expectation that the debt owed to the non-regulatory Faculty Office operations would be reduced year on year so the regulatory arm could operate without any borrowing requirement in approximately ten years.</p> <p>Welcomed the direct consultation with the notaries and representative societies but asked again that the Faculty Office consider consulting in a more public way. Also suggested it would be helpful to see more detail on the issues that emerge in consultation and particularly how the Faculty Office has responded to feedback.</p>
Developing the application and budget	
<p>Is it clear that the regulatory arm has led the development of the application?</p>	<p>Yes. 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. The Faculty Office 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 • Ongoing expenditure on updates to the legal choices website as part of the CMA recommendations. <p>The Faculty Office expenditure for the periods 2016/17 and 1 April 2017 to 31 Mar 2018 was attached to the application (Annex 1). Items included in the 2017/18 expenditure reflect the nature of the expenditure the Faculty Office is</p>

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 <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>likely to make in 2018/19, and which was set out in the application.</p> <ul style="list-style-type: none"> Income forecast 2017/18 - £428,829 (actual: £430,202) Expenditure forecast 2017/2018 - £407,042 (actual: £407,570 – note: plus retainer due to the Master of the Faculties £12,746) This resulted in a surplus of £9,886 as against the forecasted figure of £21,787. <p>Yes. The LSB was satisfied that the application outlined the overall budget and it provided a proportionate level of detail about proposed expenditure.</p> <p>The LSB notes the forecast budgets for 2020 and 2021 provide for a deficit. Please see LSB Review section for additional comments.</p> <p>Yes. The contingency arrangements are clear and set out in Annex I 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 recent years there have been a small number of relatively low claims on the Fund and one very significant one. The significant case continues to have a large impact on the accounts and has resulted in another increase to the contributions collected for the Fund.</p> <p>While the Faculty Office is not proposing to increase PCF, the Faculty Office nonetheless sent forward look indicative budgets for the years ending 31 March for 2019, 2020 and 2021. The current intention is not to raise the PCF level in these years.</p> <p>On the basis of 758 certificates at £520 being issued every year the projected surplus/shortfall is</p> <ul style="list-style-type: none"> 2019 - £175 2020 - £-34,495 2021 - £-17,545
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<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 • Has feedback been fully considered 	<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 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 budgets and an indication of how the level of the fees had been determined. They were also provided with the Core Metrics document in accordance with the costs transparency principles.</p> <p>The profession was invited to respond to the proposals via a SurveyMonkey questionnaire.</p> <p>We comment on the consultation further in the LSB Review 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. As in previous years a letter will be sent to each notary with the renewal paperwork.</p>
Permitted purposes	
Is there evidence that the PCF income is used solely for permitted purposes	Master of Faculties has solely regulatory functions for the purposes of the PCF; all income allocated to permitted purposes.
Is any other income to be applied to permitted purposes	Yes. PCF budgeted income for the financial year end 31 March 2018 accounts for about 91% of the total budgeted income. The remaining balance is expected to come from 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>In terms of regulatory issues, the Faculty Office records in the application that it has opted for a fixed practising fee.</p> <p>However, the Faculty Office has noted consultation responses and is looking at ways to introduce a fee based on turnover. It will seek additional information on turnover from notaries with a view to informing a formal consultation early in 2019.</p> <p>With regards to equality, 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.</p> <p>There is no specific commentary on the regulatory objectives and the Better Regulation Principles.</p>
Consultation with non-commercial bodies	
<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 	Not applicable; Faculty Office does not deal with non-commercial bodies.
LSB Review	
Have we consulted with any other body on the application	No. Not required.
Were any issues raised in the assessment?	Yes. Four matters were raised: <ul style="list-style-type: none"> 1) Given the impact on the Contingency Fund we asked whether further significant calls would be made on the

	<p>Fund. The Faculty Office confirmed there should be no further significant expenditure which will impact on the Fund.</p> <ol style="list-style-type: none">2) We asked whether the Faculty Office would still be able to reduce the notional borrowing from its non-regulatory arm within its proposed 10 year period. The Faculty Office stated that the change to the way the PCF is calculated is still intended to assist with this aim alongside some streamlining/costs savings, which should also help reduce the deficit.3) We asked if the responses to the consultation had led to any conclusions by the Faculty Office. The Faculty Office confirmed it had considered all feedback. For example, it was considering whether it should move to a turnover based calculation of PCF fee as a response to this suggestion.4) We noted that the budgets for 2020 and 2021 provide for a deficit. While we did not raise issues about this with the Faculty Office this time, given that the forecasts are indicative, the LSB will expect further information in next year's application if the deficit forecast remains.
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Steve Violet

17 September 2018