

Approved Regulator: Bar Council/Bar Standards Board

Part One: summary and recommendation

Summary

The proposed practising certificate fees (PCF) for 2019 comprises:

1. A reduction in Band 1 (£0-£30k) fee from £123 to £100
2. Bands 2 to 6 remain the same
3. The introduction of two new PCF bands at the high end that effectively raises the fee for those in those new bands from £1,850:
 - Band 7 (£500k-£1m) with a fee of £2,500
 - Band 8 (>£1m) with a fee of £3,000

The application states that the introduction of the two new bands at the higher level is in recognition of the increasing pay gap in earnings across the Bar and the pressures on those at the publicly-funded Bar, set against the minimum income requirements of the General Council of the Bar (GCB).

Total PCF income is forecast to be £14.9m in 2019 (compared to £13.5m in 2018), split as follows:

- £12.79m for Permitted purposes (Bar Council & BSB)
- £827k for the LSB/OLC levy
- £1.3m for the legacy pension scheme

The GCB plans for a £15.8m total expenditure budget for 2019/20. This is £644k higher than the 2018/19 budget level. This will be funded by a combination of PCF and non-PCF income. Project costs of £1.5m have been ring fenced to secure new office leases during 2019. The PCF increase is also an attempt to stabilise reserves in light of the property project.

In addition to the PCF fee levels, income and expenditure proposals, the application includes two new procedural changes:

- Changing the PCF finance reference year – information requested from self-employed barristers to confirm their earnings for PCF assessment has so far been a year behind. Altering the reference year means that self-employed practitioners will provide the same information to Bar Mutual Indemnity Fund (BMIF) and the Bar Council for renewal of insurance and the practising certificate. This reduces the administrative burden for barristers and BMIF. The Bar Council estimate the change would bring in £40k additional income
- Removal of the residual bulk payment discount, which will result in £140k of additional income to the Bar Council (the amount forgone through the discount itself).

Recommendation

We recommend that the proposed fees for 2019 be approved and that our decision letter:

- Records that we are satisfied with the rationale set out in the application for introducing the new bands/ revised fees and that the increase in fee for the minority of fee payers (in

the new higher bands) is in recognition of the increasing pay gap in earnings across the Bar and the pressures on those at the publicly funded Bar

- States that as the LSB will continue to maintain a focus on regulatory costs, our expectation is that approved regulators should be taking steps to deliver reductions in fees while maintain high regulatory standards. Where opportunities for savings and efficiencies are identified and realised we expect to see these reflected in fee levels going forward
- Welcomes that the Bar Council consulted with the profession on the proposed fees and that it was helpful that the application included an appendix of consultation responses by theme
- Notes that the application also included a helpful breakdown of representative activity by function included in permitted activities. The issue of PCF funding for permitted purposes by approved regulators is a matter which the LSB is taking an increasing interest in, so we were grateful to the Bar Council for providing this level of detail.

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	Yes. A pre-application meeting was held on 15 November to discuss the application content and timing for submission. A draft application was submitted on 11 December 2018 for review. No significant amendments were suggested, apart from to include further detail on the specific reasons for the increase in both the Bar Council and BSB budgets and to draw out consultation responses by theme. The final application addressed both, including an appendix that summarised the consultation responses by theme.
Were there any areas for improvement or specific issues in the last approval letter	We confirmed that we were grateful for the additional information provided to address our questions regarding the allocation of PCF to permitted purposes. We also noted that while we were content with the responses in terms of the assessment and approval of the 2018 PCF, we may want to return to this issue outside of the PCF process. The approval letter also noted that the Bar Council is aiming to keep the PCF levels static for the next two/three years.
2. Developing the budget and application	
Is it clear that the regulatory arm has led the development of the application?	The Bar Council has taken responsibility for submitting the PCF application and explaining the decisions behind the proposed PCF changes. However, The BSB Board approved

	<p>the 2019/20 budget bid and agreed that it is consistent with the approved strategic and annual business plans for the BSB.</p> <p>The budget proposals were scrutinised in detail by the BSB Planning, Resources and Performance Committee. In addition, the application explains that the annual expenditure is driven by regulatory BSB, Approved Regulator and representative objectives, as articulated in their respective strategic and business plans.</p> <p>While it is the Bar Council Chief Executive's responsibility as Accounting Officer, to ensure that an annual budget is drawn up for each financial year. This responsibility is discharged through the Director-General of the BSB and other Directors, supported by the Director of Finance.</p>
<p>Budget</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. The budgets for the Bar Council and BSB are clearly set out in the application. Comparison data is also provided for 2017/18 (actual) and 2018/19 (forecast).</p> <p>The subsequent regulatory budgets were approved by the Bar Council Finance Committee.</p> <p>Yes. The application explains that the BSB regulatory budget was prepared to align with the proposed Strategic Aims set out in the BSB's draft Strategic plan for 2019-20. Budget options were scrutinised by the BSB Planning, Resources and Performance Committee and the final bid was approved by the BSB Board. In October 2018, the joint Finance Committee agreed the parameters of an overall high-level budget that met all the regulatory needs and the combined organisational financial provisions required in the medium term.</p> <p>Within the budgets, certain monies are ring fenced for future known activities (for example for to secure new office leases during 2019).</p> <p>The application provides an account of key risks on PCF collection levels. It states that PCF collection levels cannot be forecast precisely as</p>

<ul style="list-style-type: none"> • Are the contingency fund arrangements clear? • 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>there is uncertainty in both the numbers of barristers that will seek renewal and in the income band that they will fall into, which affects the fees paid. The lack of access to reliable predictive information has meant that the Bar Council has analysed its own database of historic information built up over the years to build a predicative model that can be used to forecast the anticipated PCF income.</p> <p>The budgets also include operational expenses and the levies to the Legal Services Board and the Legal Ombudsman.</p> <p>Yes. The GCB maintains financial reserves to fund working capital, investments and to provide a financial damper to smooth or cushion adverse financial issues. GCB operates a reserves policy to maintain sufficient cash reserves for these purposes.</p> <p>Yes. Table 6 of the application sets out a summary of the financial outlook beyond 2019/20 with indicative income and expenditure forecasts to 2023. The forecast PCF income indicates that an increase in PCF is unlikely to be required if the forecasts prove to be correct. The level of PCF collected is forecast to be maintained at the 2019/20 level for the next three years (although data in Table 6 of the application indicates a slight increase in PCF income over the next three years). PCF declarations data will be reviewed after renewal in 2019 and the results used to inform decisions on PCF fees from 2020 onwards.</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 • Has feedback been fully considered 	<p>Yes. The PCF proposals and supporting explanatory materials were put before the profession between 6 November and 6 December 2018. 32 responses were received, representing 0.19% of practising barristers.</p> <p>Yes.</p> <p>Yes. The 32 responses were considered by the Finance Committee of the Bar Council and major themes and responses were provided as</p>

	an appendix to the main application. The Finance Committee decided to proceed with the PCF proposals based on the analysis of the consultation responses, bearing in mind the unanimous support of the members of the Bar Council (118 members).
<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 consultation was clear as to the reasons for the PCF changes.</p> <p>The consultation was launched on 6 November 2018 and closed on 6 December 2018.</p>
3. Permitted purposes	
Is there evidence that the PCF income is used solely for permitted purposes	Yes. All BSB activity is for permitted purposes. The Bar Council also allocates some PCF income to non-regulatory Permitted Purposes and the application helpfully includes a breakdown description of representative activity by function included in permitted activities.
Is any other income to be applied to permitted purposes	Yes. Table 5 (page 9 of the application) provides an overview of the income and expenditure budget for 2019/20 which includes PCF income and non-PCF income.
4. Regulatory functions	
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	Yes. Paragraph 3 of the application specifies that Bar Council representative permitted purposes will be £3.5m (£3.0m 2018/19 budget). BSB regulatory costs (all permitted purposes) will be £8.4m (£7.2m 2018/19 budget). Other regulatory funding is down by £0.1m (£1m, compared to £1.1m in 2018/19).
Are any shared services clearly explained	Yes. The high-level plans for the overhead functions shared between Bar Council and BSB were identified. These plans include the costs of staffing, operations and capital expenditure plans in support of the strategic plans for both organisations.
5. 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 	Yes. The impact of the proposed changes to the PCF on protected characteristics and equality have been covered in the application. The Bar Council consider that reducing the Band 1 PCF fee to £100 is most likely to benefit

<ul style="list-style-type: none"> Does the application contain commentary on the regulatory objective and the Better Regulation Principles 	<p>those from the following groups: Female, BAME and younger practitioners.</p> <p>The application also explains that the introduction of two new PCF bands 7 and 8 will have most impact on male, white, older and wealthier practitioners.</p> <p>The application states that there is an element of economic fairness in the proposed new bands in that it recognises the wide gap in earnings across the Bar and of the pressures faced by those at the publically funded Bar, compared to those on the higher bands.</p>
6. Consultation with non-commercial bodies (optional requirement)	
<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. This was not considered necessary.</p>
7. LSB Review	
<p>Have we consulted with any other body on the application</p>	<p>No. This was not considered necessary.</p>
<p>Were any issues raised by LSB from the first review</p>	<p>Yes. We asked the Bar Council what proportion of the regulated community would be affected by the increase in PCF. It confirmed that it would be a minority. Most fee payers will pay the same, and some less.</p>

Legal Services Board
18 January 2019