

The Bar Council/Bar Standards Board

Part One: summary and recommendation

Summary

The Practising Certificate Fees (PCF) and voluntary fees for 2014/15 that the Bar Council will charge are the same as those for 2013/14. However, the amount collected for the LSB/OLC levy will increase compared to 2013/14 as last year the Bar Council was able to use funds it had previously collected.

All fees are calculated depending on the length of call of the barrister. Implementation of a new methodology for collecting the fees, based on earnings, has been deferred until the 2015/16 renewal period to ensure that the necessary system and operation changes can be managed effectively and without undue risk.

The total budgeted income for 2014/15 is £14.8m. £9.4m of this will be generated by the PCF. An income of £1.3m will be generated by the 'voluntary' Bar Representation Fee (formerly the Members Services Fee) for the representative activities of the Bar Council (p19)¹. Key items of other income include the Inns of Court subvention, examination fees, services to members such as conferences and commissions. Income from charges other than the PCF is projected to climb by 0.6% (p14).

The Bar Council expects to achieve cost reductions of £1.3m from investments made in its infrastructure this year and planned savings for next year (p14).

A reserve of £625k towards the estimated £3.2m cost of relocation in 2019 has been designated and a £325k contribution to general reserves will be made (p14). A general contingency of £525k has been set aside to address in year financial risks (p14).

Recommendation

- That the application is approved with the following points covered by the decision letter:
 - the reason for the increase to the amount collected under the LSB/OLC levy
 - the decision by the Bar Council to delay implementation of the new fee methodology
 - we will ask to be kept updated on the review of directly attributable income
 - the completion by the Bar Council of point three of the agreed undertakings, following the LSB's investigation into the Bar Council in October 2013
 - engagement with the profession in the process for setting the PCF, given the nil response to the consultation. This will be particularly important for next year, given that the fee will be calculated using a new methodology.

The decision letter also notes the improvements that the Bar Council has made in transparency about allocation of the PCF to non-regulatory permitted purposes. However, the LSB would like to better understand how the Bar Council allocates the PCF to the non-regulatory permitted purposes. The Bar Council should therefore start to consider how it will evidence its use of PCF for non-regulatory permitted purposes in next year's application.

We will seek a mid-year update on progress against some of the key areas highlighted in the decision letter.

¹References to page numbers throughout this document refer to the Bar Council's application, available at www.legalservicesboard.org.uk.

Part Two: Assessment of the application against LSB acceptance criteria

Pre-submission	
<p>Were there any pre-submission discussions or a draft application; were any issues identified</p>	<p>We did not receive a draft application, but we did have a brief meeting with the Bar Council's Head of Finance before the submission.</p> <p>In October 2013, the LSB approved a change to Bar Council/BSB rules meaning that from 2014/15, the PCF would be charged based on earnings, rather than years of call, and that employed and self-employed practitioners would be charged the same fee.</p> <p>It was unclear from the PCF application why implementation of the new approach has been deferred from 2014/15 and when the decision was made. The Bar Council has now confirmed that the decision to defer implementation until the 2015/16 renewal period was made in November 2013 by the General Management Committee of the Bar Council, on the recommendation of the Senior Leadership Team and with the agreement of the BSB. The decision to delay has been made to ensure that the necessary system and operation changes could be managed effectively and without undue risk.</p>
<p>Were there any areas for improvement or specific issues in the last approval letter</p>	<p>Yes. In the last approval letter, we requested that a summary breakdown of the apportioning of central services and PCF income be included in future applications. This is on p21 of this year's application.</p> <p>We also asked to be kept updated on plans to review the level of all charges that make up the directly attributable income. This was not covered by the application. However, the Bar Council has since provided us with an update stating that "A review of the levels of fees and charges for directly attributable income is the subject of a current and on-going programme across the organisation but initiated and starting with the regulatory activities within the BSB. The review is expected to report in stages to BSB from February to April 2014. The dates for the subsequent review with other Bar Council representative activities will follow during the Summer of 2014". We will therefore ask to be kept updated on this review.</p>

	<p>Last year’s decision letter noted the Bar Council’s possible plans to try to reduce costs elsewhere without reducing activity within regulatory activity. The application describes at p14 where savings have been made.</p> <p>As highlighted in last year’s application, the Bar Council continues to phase out the subvention paid by the Inns of Court to fund aspects of Bar Council work.</p> <p>We raised some concern last year about the low level of responses received to the consultation on PCF levels; down from 72 in 2012/13 to 44 in 2013/14. We suggested that the Bar Council should look at ways in which it can increase the engagement of barristers in the process. Given that there were no responses to this year’s consultation, we will again highlight our concerns in the decision letter. We will seek a mid-year update on plans to engage the profession in the setting of the 2014/15 levels. Engagement with the profession will be particularly important, given the change in methodology.</p>
Developing the application and budget	
<p>Is it clear that the regulatory arm has led the development of the application?</p>	<p>No. The application process is led by the Bar Council. However, we are satisfied that the BSB has led in the development of its budget. The BSB is responsible for preparing its budget bid and supporting business. As part of this process, the BSB’s executive submits its business plan and budget bid to report to its Planning, Resources and Performance Committee. These are then signed off by the Board of the BSB, before being presented in draft to the Finance Committee. Once approved by the Finance Committee the proposed budget is submitted to the Bar Council and then consulted on with the profession.</p> <p>The cover letter to the application from the Treasurer of the Bar Council states that the Treasurer and the Chairs of the Bar Council and BSB are content that the “application has been prepared in a manner that is consistent with the regulatory independence of the BSB.”</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 budget has been developed alongside the draft Strategic Plan and the application</p>

<ul style="list-style-type: none"> • Is there evidence that the immediate and medium terms needs have been taken into account • Are the contingency fund arrangements clear 	<p>provides a description of the budget development process (p5-8).</p> <p>Yes. The approach to building the budget incorporated all areas of the business. The application also provides information about the areas that will impact on the total PCF amount. While the total PCF amount remains the same, there will be some increases in spend that will be offset with cost-reductions in non-staffing areas.</p> <p>Yes. The application describes, at p9 and p10, the contingency and reserve policies and arrangements. £525k has been allocated to address in-year financial risks and apportioned across the organisation’s cost. There will be a £325k contribution to the general reserves to contribute towards a four-month operating costs target (or £3m, whichever is greater). A reserve of £625k has also been designated towards the estimated £3.2m cost of relocation in 2019.</p> <p>We queried the figures for reserves shown on the table on p19 with the Bar Council as it was unclear how it matched the narrative proved in the application. The Bar Council has advised that the table includes the consolidated reserves, including the in-year profit and loss of £50k from the subsidiary organisation (“BARCO Trading”). The underlying Bar Council movement in General Reserves is expected to be £337k favourable.</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 budget proposals were considered at a meeting of the Bar Council in October. The budget and draft strategic plan for 2014-17 was then published on the Bar Council’s website for consultation.</p> <p>Yes. The consultation stated that the Bar Council plans to collect the same amount of non-levy PCF in 2014/15, offsetting any increases arising with cost-reductions in non-staffing areas. The application to the LSB included a description of how the fee will be collected from barristers (the draft fee statement to barristers).</p> <p>N/a. The budget was discussed at the October meeting of the Bar Council. The budget and draft strategic plan were published on the website for</p>

	<p>a short consultation, however there were no direct responses to the consultation about the budget. We have raised concerns about engagement with the profession in our decision letter (see earlier comments about this).</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 	<p>A draft schedule of practising certificate fees was included in the application. This provides a breakdown of the fees and a statement of policy and guidance about the fees payable and applying for authorisation to practice.</p> <p>We raised concern that the amount of PCF payable under the LSB/OLC levy had increased from last year (despite there not being an increase in the amount charged by the LSB/OLC). The reason for the increase was unclear from the application. The Bar Council has explained that, in summary, an over-collection in 2012 meant that the levy figure was reduced last year. That figure has now been increased to meet the levels for 2014/15. The Bar Council has confirmed that the information to fee payers will be redrafted to make this clear and provided LSB with revised draft text.</p>
<ul style="list-style-type: none"> When was/is this issued to fee payers 	<p>This will be issued to fee payers in February, following approval of the PCF by the LSB.</p>
<p>Permitted purposes</p>	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes. All PCF income has been attributed to a permitted purpose activity. The allocation of the PCF to regulatory and permitted purposes expenditure is shown at p20 and p21 shows the allocation of funding to central services by income source, including PCF income.</p> <p>A table on p23 shows the percentage of the cost of specific committees/functional areas of the Bar Council attributable to PCF income. The application sets out on p22-33 a detailed explanation of the permitted purposes in relation to each of the relevant functional areas or representative committees. This level of transparency is a helpful addition to the application and reflects a review by the Bar Council of the rationale of its allocation of the PCF.</p> <p>However, we remain unclear about how the Bar</p>

	<p>Council's calculates how the work of its committees falls within the non-regulatory permitted purposes. We will be exploring this point further as part of next year's PCF process. In the meantime, we expect the Bar Council to consider how it will evidence its use of PCF for non-regulatory permitted purposes in next year's assessment.</p> <p>An undertaking of the LSB's recent investigation into the Bar Council was that all funds for the Remuneration (Fees Collection) activity should be funded by the PCF only. This was not reflected in the original budget submission to the LSB. However, this has now been rectified.²</p> <p>We also sought further information from the Bar Council about what the Corporate area of spend, which is largely funded by the PCF, includes. We were advised that this "covers the salary and on-costs of the Chair, Vice Chair and Chief Executive of the Bar Council, their associated support costs including office based support staff, travel expenses, budgets for their professional activities and donations to appropriate causes. This area including an apportionment of shared central services costs and excluding donations is part funded by PCF as indicated in schedules 3.1 and 3.2."</p>
<p>Is any other income to be applied to permitted purposes</p>	<p>Yes. On p15, there is reference to other income. This includes allowable fees and charges for specific purposes by the BSB and services for members by the representative function. These include £1.15m from examination fees and £0.98m from services to members including conferences and commissions. The Table "Figure 2 – other income" on p16 shows a breakdown of all non-PCF income sources. Table 3.1 shows how other income sources are allocated to the permitted purposes.</p>
<p>Regulatory functions</p>	
<p>Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions</p>	<p>Yes. Table 3.1 on p20 provides a breakdown of the £8.8m regulatory expenditure (disciplinary, education and standards, examinations and assessments, qualifications, professional practice/ethics, quality, QASA and entity</p>

² Further information about the LSB's investigation into the Bar Council is available at www.legalservicesboard.org.uk.

	regulation).
Are any shared services clearly explained	Yes. The allocation and funding of central budgeted activities is shown on p21. This reflects our request last year for a summary breakdown of the apportioning of central services and PCF income within it in greater detail.
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 objective and the Better Regulation Principles 	<p>Yes. The application considers the regulatory and diversity impact of the PCF on p47.</p> <p>Partly. The application states that the BSB discharged its responsibility to ensure that the proposed budget is aligned with the regulatory objectives through the budget review process. The Bar Council considers that its work which is not of a regulatory nature is designed to support the regulatory objectives. However, there is no mention of the Better Regulation Principles in the application.</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 	No. However, our assessment is that this is a very low risk area of concern for the Bar Council and we noted that last year's application stated that very few barristers work in charitable bodies.
LSB Review	
Have we consulted with any other body on the application	No.
Were any issues raised by LSB colleagues from the first review	<p>Yes. Key concerns were:</p> <ul style="list-style-type: none"> The original submission did not take undertaking three of the LSB's investigation into account (relating to the Remuneration (Fees Collection) being only funded by PCF). How the LSB understands how non-regulatory permitted purposes spend is allocated.

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Date: 29/01/13