

BAR COUNCIL

2014-15 BUDGET APPLICATION TO LSB

3.3 DETERMINING PERMITTED PURPOSES OF NON-REGULATORY ACTIVITIES

Introduction

As part of its annual budget-setting process, the Bar Council has considered section 51 of the Legal Services Act 2007 alongside its planned non-regulatory activities in order to assess the extent to which they fall within the “permitted purposes” of the Act. In considering this, there has been analysis of historic allocation (for example, as previously allowed on the basis of section 46 of the Access to Justice Act 1999) and a rigorous test as to whether the previous rationale used in previous budgets remains valid and the extent to which it may have changed. This papers set out the revised rationale.

Generally

In summary, the work of the Bar Council which is not of a regulatory nature is nonetheless designed to support the regulatory objectives set out in section 1(1) of the Legal Services Act 2007. The activities which flow from this work are weighted towards the promotion of the rule of law at home and abroad, improving access to justice for all, ensuring the highest standards of professional practice and training in the public interest, expanding public awareness of citizens’ legal rights and duties, the protection of human rights and fundamental freedoms, building international relationships and promoting awareness of the values of the maintenance of the rule of law as well as contributing to reform of the law and participation in the legislative process.

Activity which could be described as a ‘trade union’ function (in particular the making of representations about rates of remuneration, which is undertaken in the interests of barristers as well as the public interest) is undertaken mainly by a number of Specialist Bar Associations (SBAs), notably the Criminal Bar Association and the Family Bar Association, on behalf of their members. Although the Bar Council provides certain administrative and other support services to some of the SBAs (under agreements with the Member Services Department, to which no amounts from the PCF may be applied), it is the SBAs which take the lead on making representations on remuneration and related matters on behalf of their members and in order to represent their particular interests, rather than the Bar Council itself.

The fact that there is not a higher percentage of Bar Council work attributable to permitted purposes reflects the fact that there are occasions when the representational or “trade union” work of the Bar Council is undertaken for the benefit of the Bar *as a whole* (rather than for a particular section of members’ interests) and in the interests of the administration of justice. Following a review of the activities, we present a summary of the maximum percentage

allocation of the activity's costs that could be funded by the PCF in 2014/15 in the following table.

Committee/Functional Area	Max percentage attributable to PCF income
Professional Practice	100
Training for the Bar	100
International	80
Europe / Brussels Office	100
Employed Barristers	80
Young Barristers	80
Remuneration (Policy)	80
Remuneration (Fees Collection)	100%
Law Reform	100
Legal Services	80
Access to the Bar	95
Alternative Dispute Resolution	85
IT Panel	85
Social Mobility	100
Communications	75

A detailed explanation of permitted purposes in relation to each of the relevant functional areas or representative committees follows below.

Professional Practice Committee

The work of the Professional Practice Committee (PPC) remains **100% within the Permitted Purposes** and in particular section 51(4)(a)(ii) namely “the giving of practical support, and advice about practice management, in relation to practices carried on by such persons”. This has been the percentage allocated in the past and it remains applicable. There is also a strong consumer/public interest element to this work. The promotion of best practice, advice and guidance as to proper conduct in practice is designed with this objective in mind. Work undertaken in this area is often directly complementary to the work of the Bar Standard’s Board (BSB). There is a good working relationship in particular with the BSB’s Standards Committee which sees and approves all PPC guidance which offers interpretation of the Code of Conduct. The PPC’s principal activity is to offer guidance, both orally and in writing, to members of the profession in matters relating to the Code of Conduct. This guidance is provided through the medium of the Bar Council’s website (approximately 200 documents including FAQs), and through the ethical enquiries helpline (handling approximately 600 enquiries per month).

The PPC also responds to consultations from the BSB and other relevant bodies in relation to matters relating to the Code of Conduct.

The PPC also assists other committees or the Inns with relevant events. For example, for the PPC regularly provides practitioner members for Code of Conduct sessions run by the International Committee and the Young Barristers' Committee.

Training for the Bar Committee

Similarly, the work of the Training for the Bar Committee (TfBC) falls **100% within the permitted purposes**, particularly 51(4)(a) ("the ... education and training of ... persons wishing to become [authorised] persons"). This activity is complementary to, rather than in competition with, BSB's activities in education and training. The TfBC acts very much in the public interest in the dissemination of educational materials to school children, students and others considering a career at the Bar explaining how those aspiring to become barristers might pursue their interest in doing so, the qualifications and standards that need to be attained and, once qualified, be maintained. There is also a strong element of the promotion of equality and social mobility in the work of the TfBC, in its support of the Social Mobility Foundation's Annual Placement Scheme, its work with the Inns of Court, its work with the Sutton Trust, its 'speak up for others' programme and its Pupillage Gateway Service. Significantly this work seeks to promote public understanding and awareness of human rights and fundamental freedoms.

International Committee

Much of the international activity of the Bar Council is focused on the promotion of relations with relevant international bodies, governments or the legal bodies of other jurisdictions (section 51(4)(f)). There is a strong public as well as consumer interest in this activity. Of its activities **80% fall to be covered by the permitted purposes** in this way. This allocation recognises that the promotional activity referred to has an ancillary purpose which is to create opportunities for identifying possible business development. The promotion of legal services has been recognised by the UK Government as a key element of the Government's growth strategy which is helping to attract overseas business to lawyers in England and Wales (and thereby to contribute amongst other things to the strength of the City of London as a leading global financial and professional services centre). The promotional work of the International Committee also serves to promote the virtues and the values of our common law system and to emphasise the high quality of our judiciary and the justice system. The Bar Council's overseas missions fulfil an important educational purpose by informing foreign lawyers about English law and help to improve knowledge sharing by building and maintaining effective relationships. CPD-style seminars are therefore at the core of most of these missions. In addition, a number of meetings are arranged with legal bodies and associations in the local

jurisdiction to facilitate exchanges of information about legal developments in areas of mutual interest to the countries concerned.

Incoming delegations from foreign bar associations to England and Wales fulfil similar objectives. It is considered to be in the wider public interest to raise standards in the legal profession world-wide in these ways. Such activities are supported by the production of publications, which are designed to educate foreign lawyers about English law, the holding of the Bar Council's annual International Rule of Law Lecture (designed to advance debate about and interest in the rule of law within the legal profession), our membership in the International Criminal Bar Association which supports those practising before the international criminal tribunals, and our support for an annual UN Association lecture.

Maintaining good working relationships with overseas legal bodies is the reason for the Bar Council's active engagement in the work of the International Bar Association (IBA), the Commonwealth Lawyers Association and the Council of Bars and Law Societies of the European Union (CCBE) which is designed to influence the development of international aspects of the regulation of the legal profession and law reform in the public and the consumer interest. This work is carried out in close liaison with the BSB and covers, for example, the development of IBA Principles for the Conduct of the Legal Profession and the reform of the EU lawyers' directives. The Bar Council is also involved in international Exchange Schemes for lawyers, whereby overseas' lawyers visit this country in order to learn about English law and professional standards and English barristers spend time abroad gaining practical legal experience, are run in cooperation with foreign bar associations and help to maintain and strengthen our international links and promote respect for the UK legal profession and for the Rule of Law. There is a specific Rule of Law Working Group which is dedicated to and oversees this activity.

The Bar Council's involvement in the planning and organisation of the annual Opening of the Legal Year activities in London reinforces the above, through a series of set-piece, high profile events which are designed to forge and develop links with foreign and international bar associations.

Not covered by the permitted purposes

Some elements of the International section's activities are more heavily weighted towards business development than others in which this element is secondary or incidental to the provision of education and relationship building. Overseas missions which are organised by the Bar Council with a primary purpose of business development are invariably supported financially and in other respects by particular SBAs that wish to pursue a specific business objective of their members related to the development of the association's professional specialism or to target a specific geographic market to reflect their members' needs and

interests. In these circumstances, it is therefore considered appropriate that 20% of International activities should not fall to be treated as 'Permitted Purposes' to which amounts raised by the PCF could be applied.

European Committee / Brussels Office

The Bar Council has maintained a presence in Brussels for several years and engages the services of a consultant to act as the eyes and ears of the Bar Council at the heart of government in the EU. The consultant monitors the output of the EU institutions that might have a bearing on the reform and development of English law, the administration of justice in England and Wales and the consumer as well as the public interest. She identifies EU-wide consultation exercises and related initiatives and draws them to the attention of the Bar Council's European Committee (as well as other representative committees) and to the BSB. The Bar Council's consultant, who occupies a modest office in Brussels (in a room in premises shared with several other law societies and bar associations) transmits the views of the Bar of England and Wales to the institutions of the EU as well as to the UK's Permanent Representation on a wide range of legal matters affecting the development of EU law and justice including matters of family law, administration of estates, contract law and IP). Accordingly, **this function falls 100% within the permitted purposes.**

Employed Barristers Committee

Of the activities carried out by the Employed Barristers Committee (EBC) **80% fall in part within the permitted purposes.** The committee's principal activity is to respond to consultations initiated by the Government, EU, the Law Commission and other bodies on matters of law reform and legal practice, offering the particular perspective of barristers in employed practice. As such, their participation in the legislative process falls within the ambit of section 51(4)(c). The committee also organises an annual conference and arranges seminars for members of the employed Bar which are geared to providing practical support and advice, as covered by section 51(4)(a) and section 51(4)(a)(ii). One of the key objectives of these conference and seminars is to raise awareness of the importance of law reform issues in legal circles (section 51(4)(c)).

Not covered by the permitted purposes

A small proportion of what is a very small budget for the conference and publications produced by the EBC could be categorised as closer to lobbying in the interests of the Employed Bar rather than providing an Employed Bar perspective in the interests of the administration of justice more generally. Accordingly, in recognition of this element, 20% of

the committee's costs have been designated as non-permitted purposes and are purposes funded by other sources.

Young Barristers Committee

80% of the work carried out by the Young Barristers Committee (YBC) falls within the permitted purposes. Many of the committee's activities fall within sections 51(4)(a), 51(4)(a)(ii), 51(4)(c) and 51(4)(f).

The committee's principal activities are as follows :

- i. to consider matters affecting the administration of justice and other matters affecting the interests of the young Bar
- ii. to respond to consultations from the government, the EU and others
- iii. to organise an annual conference, providing education and training, practical support and advice about practice management as well as covering certain areas of the legislative process
- iv. to organise seminars on legal issues
- v. to promote the work of the Bar at international and national events, such as organising the International Weekend at the start of the Opening of the Legal Year and attending several international events throughout the year.

In responding to consultations, which will inevitably affect the administration of justice, the YBC are participating in the law reform and legislative process, contributing towards maintaining and raising professional standards, and providing advice on the regulation, accreditation, education and training of applicable persons.

The YBC are involved in the promotion of relations between the Approved Regulator and relevant national or international bodies and the legal professions of other jurisdictions but from the young practitioner perspective and, for example, they do so through their work with the JLD International Weekend, and ensuring they have a strong presence at international events.

Not covered by the permitted purposes

The YBC performs an important function in ensuring that those new to practice (as well as those about to join the profession) have their perspective included in relevant consultations on law reform and administration of justice issues. However, there are occasions when that activity does become more in the nature of lobbying for or representing the interests of the Young Bar as a sector of the Bar rather than forming a contribution to the interests of the administration of justice more generally. In recognition of this element, 20% of the committee's costs have been designated as non-permitted purposes, funded by other sources.

Remuneration (Policy)

Remuneration (Policy) activities are **80% within the boundaries of the permitted purposes**: see sections 51(4)(a)(ii), 51(4)(c) and 51(4)(f). Activities include:

- i. Providing legal, policy and economic analysis and advice to Government and Parliamentarians on primary and secondary legislation (including measures relating to the remuneration of the profession from public funds)
- ii. Communicating to the profession about remuneration matters including changes in Government policy (including tax and benefits matters) and offering practical support and guidance in relation to how these changes might affect the management of their practices
- iii. Providing education and training to the profession (and those who support it e.g. barristers' clerks and practice managers) on remuneration matters including changes in Government policy
- iv. Providing guidance to the profession and other interested parties on remuneration matters affecting the profession (for example, through a telephone helpline which specifically addresses remuneration, tax, funding and fees issues)
- v. Responding to requests from, and consultations initiated by, Government Departments and related bodies on the development of public policy affecting the remuneration of legal services providers including barristers, including the provision of advice on legal aid contracts and related procedures of the Legal Services Commission.

Not covered by the permitted purposes

Within those activities which fall squarely within the permitted purposes, there are occasions when the Remuneration Team is acting primarily in furthering the interests of the Bar. Elements of the annual conference and events in which they are engaged, for example, will be geared to offering guidance in relation to such matters as how to win work, the best fee arrangements in which to enter and the optimum tax positions for practitioners to adopt. In recognition of this element, 20% of the committee's costs have been designated as non-permitted purposes, funded by other sources.

Remuneration (Fees Collection)

100% of the Fees Collection activities is attributed to the permitted purposes as per agreement with LSB October 2013. Those activities include:

- i. Operation of the Withdrawal of Credit Scheme in cases in relation to fees disputes between solicitors and barristers. Barristers who are owed money by solicitors and who have sent the standard letters and not received a satisfactory response, can report the matter to the Bar Council. The Bar Council will contact the firm to ask for an explanation for the delay in payment and then consider whether to make a Direction against the firm. The effect of a Direction is that no member of that firm may instruct a barrister in a privately funded matter unless the fees are paid in advance or the work is done *pro-bono*
- ii. Operation (with the Law Society) of the Joint Tribunal Service. The Tribunal hears disputes between barristers and solicitors regarding the amount of fees charged.

Law Reform Committee

The activities of the Law Reform Committee are **100% within the Permitted Purposes**. The committee's principal activity is to respond to consultations from the Government, EU, the Law Commission and others on matters relating to law reform issues. As such, their participation in the legislative process has a clear public interest and falls within category section 51(4)(c). The Committee also organises an annual lecture, seminars and an essay competition (open to students and pupils in chambers, to encourage the promotion of awareness of law reform issues and the maintenance and raising of professional standards) all of which fall within section 51(4)(a). A key objective of the lecture is to raise awareness of the importance of law reform issues in legal circles and, as such, comes squarely within section 51(4)(c).

Legal Services Committee

The activities of the Legal Services Committee are **80% within the Permitted Purposes**. Many of the committee's activities fall within sections 51(4)(a), 51(4)(a)(i), 51(4)(a)(ii), 51(4)(c) and 51(4)(f). The committee's principal activities are as follows :

- i. To consider matters affecting the administration of justice, rights of audience for the Bar and people other than barristers
- ii. To maintain relations with and making representations to government, the EU, the Law Society and other organisations with common interests in the administration of justice
- iii. To keep under review developments within the legal services market with particular reference as to how they affect the work of the Bar and by extension the efficiency and effectiveness of the market more generally

- iv. To monitor and liaise with the Bar Mutual Indemnity Fund (BMIF) and keep apprised of issues affecting the professional indemnity insurance of the Bar
- v. To monitor and co-ordinate the work of the Access to the Bar Committee and also the Information Technology Panel and Alternative Dispute Resolution Committee.

The Legal Services Committee provides an important function in responding to consultations from Government and others on matters which affect the administration of justice, rights of audience for people other than barristers and matters affecting the Bar generally. In responding to these consultations, the committee's activities fall within one or more of a number of categories; they are participating in the law reform and legislative process; contributing towards maintaining and raising professional standards; and providing advice on the regulation, accreditation, education and training of applicable persons.

The committee also engages with government and other external bodies about the way in which the Bar practises and in providing advice about the justice system generally. It is clearly in the public and consumer interest that there should be liaison and discussion between the Bar and other agencies in the justice system and that the Bar should make a significant contribution to the administration of justice. The work may also lead to the issuing of guidance to the Bar on good practice. The committee also has a role in monitoring the work of a number of committee's all of whose activities to a significant extent can be classified as being within the permitted purposes.

Not covered by the permitted purposes

The committee undertakes a number of projects which are geared towards the development of the work of the Bar or protecting the interests of the Bar. The proportion of this purely representational work, amounts to approximately 20% of the overall programme and is excluded from a call on PCF-derived funds (even though in some areas it could be viewed as coming within the scope of section 51(4)(a)(ii)).

Access to the Bar Committee

95% of the activities of the Access to the Bar Committee are covered by the permitted purposes. The committee's aim is to explain and interpret the practical application of the regulatory framework governing the public and licensed access schemes to both the Bar and consumers. In doing so, the ABC is very much within the ambit of sections 51(4)(a), 51(4)(a)(i), 51(4)(a)(ii). It promotes the public interest and the interest of consumers, encourages a diverse and competitive legal profession, promotes consumer choice and value

for money services and encourages access to justice more generally. Much of this work is complementary to the work of the BSB which of course is responsible for setting the regulatory framework for the schemes. On occasion, the committee also provides practitioner input and support to the regulatory processes that review and update that regulatory framework. The ABC also providing practical support and guidance to barristers, participating or contemplating participating in the schemes and, as such promotes the maintenance and raising of professional standards in this area.

Not covered by the permitted purposes

A small element of the ABC's activity could be construed as active promotion of the schemes as an alternative strand to practice/income for barristers (such as some of the advice covered in occasional publications) and as such this element is covered from non-PSF resources.

Alternative Dispute Resolution Committee

The activities of the Alternative Dispute Resolution Committee (ADRC) are **primarily permitted purposes 85% funded by PCF funds** and the remainder by other resources. Its aims include the provision of education and information in relation the use and benefit of mediation to the consumer and to the Bar practising in that area. In doing so, the committee encourages alternative avenues for consumers to access justice and seek redress in turn creating broader consumer choice, to promote competition within a diverse legal profession and to enhance the maintenance and raising of professional standards, in part through the practical support and advice offered to barristers. This activity falls squarely within sections 51(4)(a), 51(4)(a)(i) and 51(4)(a)(ii).

Not covered by the permitted purposes

A very minor part of ADRC's activities promote ADRC as an alternative workstream for the benefit of barristers and is less focussed on how the provision of those services contributes and benefits the system of justice more generally. For this reason 15% of the Committee's activities are attributed to non-PCF funds.

Information Technology Panel

85% of Information Technology (IT) Panel activities fall within the permitted purposes.

The work of the panel is focused mainly on promoting the maintenance and strengthening of professional standards through the provision of guidance in relation to relevant legislation (such as the Data Protection Act), good IT practice and information security, membership of and relationship-building with other relevant national bodies such as ITAC, the HM Courts and Tribunals Service, and other government bodies as well as with the suppliers of IT services to those supporting the IT infrastructure of the justice system such as

listing software suppliers. The panel also offers training and educational activities to members of the profession. This activity falls within sections 51(4)(a), 51(4)(a)(i), 51(4)(a)(ii) and 51(4)(f).

Not covered by the permitted purposes

There is an element of the IT Panel's work which cannot be covered by PCF activities. Although they occur relatively infrequently, these activities do feature in the work of the Panel and include advice to the Bar on the use of IT for commercial and marketing activities. For this reason, 15% of its activities are funded by non-PCF resources.

Social Mobility Committee

100% of the activity of the Social Mobility Committee falls within the Permitted Purposes and includes: 'training' and 'education' of barristers and those wishing to become barristers (section 51(4)(a)); to address and promote objectives of the Equality Act 2010 to which the Bar Council as an approved regulator is subject (specifically 'advance equality of opportunity between people from different groups') (section 51(4)(a)(ii)); to address and promote other objectives of the Equality Act 2010 to which the Bar Council as approved regulator is subject (specifically to 'eliminate unlawful discrimination and other conduct prohibited by the Equality Act' and to 'advance equality of opportunity between people from different groups').

Communications function

A significant proportion (**75%**) of the work of the Communications team is **legitimately within the permitted purposes**. It is geared towards the promotion of standards and good practice, publicising practical guidance, promoting entry to the Bar, advocating greater social responsibility by the Bar (in particular working in conjunction with the Inns of Court and government in relation to the 'social mobility agenda'), publicising training events and *pro bono* work, and supporting the promotion of events such as the Schools Mock Trial competition. This activity is very much in the public and consumer interest. A proportion of the work of the team falls under the Approved Regulator function and complements the BSB's regulatory communications function. This includes, for example, the communications effort to generate awareness within the profession about changes and obligations (such as the 'authorisation to practice' regime) created by the implementation of the Legal Services Act 2007.

Not covered by the permitted purposes

Some aspects of the work of the Communications team are closer to lobbying government, opinion-formers and others in the interests of the Bar as well as in the public interest and this element in so far as it relates to promoting the needs of the former means that it cannot be construed as falling entirely within permitted purposes and, for that reason, 25% of the team's activities are covered by non-PCF resources.

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Annex 1