

FACULTY OFFICE

APPLICATION TO LEGAL SERVICES BOARD FOR APPROVAL OF PRACTISING FEES 2011/12

Introduction

On behalf of the Master of the Faculties I am making the above application under section 51 of the Legal Services Act 2007 ('LSA 2007') and the rules made by the Legal Services Board ('LSB') under that part (the Practising Fee Rules 2009).

Background

Notaries are required to apply for a certificate to practise from 1st November to 31st October in the following year (Public Notaries (Practising Certificates) Rules 1982 & 1991). It is an offence to practise otherwise than in possession of a current valid practising certificate (Notaries (Conduct and Discipline) Rules 2011). A fee is required to be paid for the practising certificate, and a contribution must be paid to the Faculty Office Contingency Fund at the same time. The level of such a fee and contribution is determined from time to time by the Master of the Faculties. If a notary applies for a practising certificate part-way through a practising year he/she must pay the full amount which was owed on 1st November of that period.

Proposals

- In the practising year 1st November 2010 - 31st October 2011 notaries paid the following fee and contribution:-

Practising certificate - £340

Contribution to Contingency Fund - £10

- In the practising year 1st November 2011 - 31st October 2012 the Master intends to set the following fee and contribution:-

Practising certificate - £380 (an increase of £40)

Contribution to Contingency Fund - £20 (an increase of £10)

The Master of Faculties also requires fees to be paid on appointment as a notary and in relation to notarial qualifications. However we have been advised by the LSB that these fees are not regulated by the Practising Fee Rules 2009 and they do not form part of this application.

Permitted purposes

Rule 5 of the Practising Fee Rules requires that monies raised through practising fees must not be applied for any purpose other than one or more of the permitted purposes. The Faculty Office has no representative functions. The profession is instead served by two representative societies, the Society of Scrivener Notaries and The Notaries Society. The distinction between these functions is clarified in the statement of compliance with the LSB Internal Governance Rules 2009 made by the Master of the Faculties. As such all Faculty Office revenue from notarial practising fees is expended

on the permitted purposes, and almost entirely on the regulation and accreditation of notaries. The Faculty Office expenditure for the financial years 2009 and 2010 are attached and itemise the purposes to which Faculty Office revenue has been applied (annex 2).

The items included in the 2010 expenditure reflect the nature of the expenditure which is likely to be made in 2011.

Reasons for proposed fee and contribution

The Faculty Office operates a calendar year accounting period. The 2011 budget is attached (annex 1). As the practising year does not coincide with the accounting year the budget reflects that fees will be collected from both practising years. The budget relies on the assumption that the number of notaries reapplying for a notarial practising certificate will remain similar to earlier years. This information is derived from the numbers of individuals known to be studying to become notaries, and from appointments and retirements in 2010.

It is necessary to increase the level of the practising fee because of the charges which have been levied on the Faculty Office by the Legal Services Board and the Office for Legal Complaints ('OLC'), and because of increased expenditure on Faculty Office staff for LSB and OLC related work.

We propose to increase the level of the practising fee by 11.75 % compared with the previous year. This is required to reduce the accumulated deficit from earlier years to nil, and takes into consideration the Legal Services and OLC Levies, which constitute a substantial proportion of the total proposed increase. The LSB imposed charges themselves exceed £32.00 per notary with an additional £8.50 per notary is attributable to the OLC levy.

The 2010 accounts for the Faculty Office Contingency Fund are attached (annex 3). Over several years claims on the Contingency Fund have been few. A claim was made in 2008 to reimburse the Faculty Office costs in relation to a disciplinary case. A further claim will be made in the current financial year and this has given rise to the need for the current proposed increase in order that our intention to build the fund up to the level of £100,000 can be achieved. This will provide for extraordinary expenditure on discipline related matters from time to time.

Form of consultation with the profession

The Faculty Office has consulted with the profession by formally writing to the secretaries of the two representative societies, the Society of Scrivener Notaries and the Notaries Society. The Registrar attended a meeting of the Notaries Society Council in April to which he submitted a report including the practising certificate fee proposal for the coming year. In turn the secretaries are able to consult their members and report back to the Faculty Office. The representative societies are provided with the accounts for the previous financial year, the attached budget (annex 1) and a note of how the level of the fees has been determined. The Master will inform members of the profession of the proposed fees during his speech at the Notaries Society annual conference on 23 September 2011. The Faculty Office has received no adverse comment in relation to these proposals.

In addition, once the Faculty Office has received the approval of the LSB for the level of the fee and contribution, it will include a reference to an explanatory note on the level of the fees being available to read on the Faculty Office website (and on request).

Reasons for not adopting a variable fee

While the Solicitors Regulation Authority has set variable fees depending on the size of the firm in which the solicitor practises, this was not considered appropriate for notaries because the vast majority of notaries practise as sole-practitioners in their capacity as a notary. The Bar Vocational Council have also considered setting variable fees depending upon the year of call of the barrister or whether they have been given silk. We consider that it would be a disproportionately burdensome exercise to try to calibrate notarial fees on a 'means-tested' basis, and consider that this could give rise to obvious unfairness if the calculation was conducted without the fullest of information about the notary's practice.

Diversity impact

We do not consider that the level of the fees will have any adverse effect on the diversity of the profession. Additionally, without a variable fee (which has been discounted for the reasons above) it would not be possible to effect a system which is any fairer than requiring a single fee for each notary.

Contact information

Further information relating to this application is available from:-

The Registrar
The Faculty Office
1 The Sanctuary
Westminster
London
SW1P 3JT

email. faculty.office@1thesanctuary.com

telephone. 020 7222 5381 (please ask to speak to [name of clerk])



P.F.B.BEESLEY, REGISTRAR

1 September 2011

ANNEX 1

FACULTY OFFICE NOTARIAL BUDGET YEAR ENDED 31 DECEMBER 2011

NOTARIES	£	£
Income:		
850 certificates @ £380*	323,000	
Appointments (50 @ £540)	27,000	
Exam Fees	0	
Certificates of Exemption (50 @ £75)	3,750	353,750
Less Expenditure:		
Management Charge	232,560	
Direct Expenditure	47,500	
Legal Services Board fee 2011**	45,802	325,862
Projected Notaries Surplus		£27,888

* 885 notaries on the roll but 13 are new appointments. Estimated 850 renewals

** Represents 2nd instalment set up costs £9,514 and 2011 running costs estimated at £35 per notary

SUMMARY OF NOTARIAL SURPLUS/SHORTFALLS 2006-2010

b/f from 2006	2007	2008	2009	2010	Retained Surplus/Shortfall in 2010 Accounts
£6,033	-£15,764	-£26,090	£15,767	£2,412	-£17,642

ANNEX 2

FACULTY OFFICE

NOTARIAL FEES AND EXPENSES

YEAR ENDED 31 DECEMBER 2010

	2010		2009	
	£	£	£	£
Notarial and Practising Certificates Fees		312,536		239,674
Notarial Admission Fees		6,900		11,555
		<u>319,436</u>		<u>251,229</u>
LESS:				
Expenditure - Indirect				
Registrar's Fees	7,163		7,902	
Rent and rates	25,511		22,818	
Light and heat	2,678		2,117	
Stationery & Copying	3,797		3,989	
Postage	2,008		2,051	
Telephone	1,949		2,050	
Repairs and maintenance	12,823		5,054	
Insurance	2,685		2,218	
Sundries	8,972		4,746	
Cleaning	2,729		3,005	
Security	-		94	
Catering	1,065		1,023	
Irrecoverable VAT	12,492		8,560	
	<u>83,872</u>		<u>65,627</u>	
Expenditure - Direct				
Salaries & N.I. (jointly employed staff)	157,458		137,095	
Entertaining	2,582		2,277	
Travel	1,650		434	
Crown Office fees	200		375	
Accountancy	2,197		2,738	
Printing and stationery	8,694		9,691	
Counsel's Opinion (John Dick - VAT)	1,762		-	
Sundry	654		165	
Admission Expenses	1,983		1,672	
Legal Services Board Levy	39,080		-	
Insurance	5,885		4,904	
	<u>222,145</u>		<u>159,351</u>	
		<u>(306,017)</u>		<u>(224,978)</u>
		13,419		26,251
Retainer due to the Master of Faculties		<u>(11,007)</u>		<u>(10,484)</u>
Surplus		<u>£2,412</u>		<u>£15,767</u>

The surplus of £2,412 reduces the accrued shortfall to £17,642.

ANNEX 3

FACULTY OFFICE - CONTINGENCY FUND

INCOME ACCOUNT

YEAR ENDED 31 DECEMBER 2010

	2010		2009	
	£	£	£	£
CONTRIBUTION FROM NOTARIAL PRACTISING CERTS		8,075		7,295
Bank deposit interest		33		38
Less:				
Expenses for Disciplinary Hearings	1,041		0	
Provision for income tax	7		8	
Fees re Income tax payment	294		294	
		(1,342)		(302)
Retained surplus for the year		<u>£6,766</u>		<u>£7,031</u>

BALANCE SHEET

AS AT 31 DECEMBER 2010

	2010		2009	
	£	£	£	£
ASSETS				
Deposit and current accounts	69,251		63,148	
Sundry Debtors	7,773		7,111	
LESS LIABILITIES		77,024		70,259
Sundry creditors	294		294	
Income tax payable	7		8	
NET CURRENT ASSETS		(301)		(302)
		<u>£76,723</u>		<u>£69,957</u>
REPRESENTED BY:				
Contingency Fund Capital Account				
Balance as at 1 January	69,957		62,926	
Retained surplus for year	6,766		7,031	
Balance at 31 December		<u>£76,723</u>		<u>£69,957</u>

ACCOUNTANTS' REPORT

We have prepared, without carrying out an audit, the above balance sheet and accounts from the Registrar's records and from information and explanations supplied to us.

haysmacintyre
haysmacintyre
Chartered Accountants

Fairfax House
15 Fulwood Place
London WC1V 6AY
Date... 31 March 2011