

FACULTY OFFICE

APPLICATION TO LEGAL SERVICES BOARD FOR APPROVAL OF PRACTISING FEES 2012/13

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 Practising Fee Rules 2009 made by the Legal Services Board ('LSB') under that Act.

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 2011 - 31st October 2012 notaries paid the following fee and contribution:-

Practising certificate - £380
Contribution to Contingency Fund - £20

- In the practising year 1st November 2012 - 31st October 2013 the Master intends to set the following fee and contribution:-

Practising certificate - £400 (an increase of £20)
Contribution to Contingency Fund - £40 (an increase of £20)

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 2010

and 2011 are attached and itemise the purposes to which Faculty Office revenue has been applied (annex 2).

The items included in the 2011 expenditure reflect the nature of the expenditure which is likely to be made in 2012.

Reasons for proposed fee and contribution

The Faculty Office operates a calendar year accounting period. The 2012 budget is also 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 2011.

It is necessary to increase the level of the practising fee in order both to meet the charges which have been levied on the Faculty Office by the Legal Services Board and the Office for Legal Complaints ('OLC') and to maintain the service levels required of Faculty Office staff for LSB and OLC related work.

We propose to increase the level of the practising fee by 5.25% compared with the previous year. This represents a significantly lower percentage increase than was requested and approved last year and is only slightly above the average rate of inflation over the last twelve months. This takes into consideration the LSB and OLC Levies amounting to £28.00 per notary with an additional £7.00 per notary attributable to the OLC levy together with budgeted increases in office expenses and staff costs.

The 2011 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 significant claim was made in 2011 in relation to a disciplinary case which was properly brought but in respect of which the notary was not found to have committed Notarial Misconduct and the costs of which were borne by the Contingency Fund. 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 21 September 2012. Whilst the Faculty Office would have preferred to have maintained the practising certificate fee and contingency fund contributions at

last year's level, for the reasons outlined above this has not been possible and the profession understands and accepts the need for the slightly above inflation increase in the practising certificate fee and has received no adverse comment in relation to these proposals. The need for a robust and proportionate disciplinary process is also understood and the stated aim of reaching and maintaining an appropriate level of Contingency Fund is not disputed.

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. 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.

We are considering the possibility of a two-tier practising certificate fee to make a distinction between those notaries who carry out pure notarial practice and the relatively small number who also undertake reserved instrument activities and probate activities (as defined in the LSA 2007) *qua* notary but we are not bringing forward formal proposals at this stage.

Diversity impact

We do not consider that the level of the fees will have an adverse impact on the diversity of the profession. Additionally, without a variable fee (which has been discounted for the reasons above) it would not be possible at this time 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 Neil Turpin, Clerk)



P.F.B.BEESLEY, REGISTRAR

29 June 2012

ANNEX 1

FACULTY OFFICE NOTARIAL BUDGET YEAR ENDED 31 DECEMBER 2012

NOTARIES	£	£
Income:		
147 certificates @ £380*	55,860	
703 certificates @ £400*	281,200	
Appointments (50 @ £540)	27,000	
Exam Fees	0	
Notarial qualification information packs	3,500	
Certificates of Exemption (50 @ £75)	3,750	371,310
Less Expenditure:		
Management Charge	273,265	
Direct Expenditure	50,580	
Legal Services Board fee 2011/12**	41,899	365,744
Projected Notaries Surplus		£5,566

* Estimated 850 renewals some at last years' fee and the majority at the 2012/13 fee.

** Represents 3rd instalment set up costs £9,514 and 2012 running costs estimated at £35 per notary

SUMMARY OF NOTARIAL SURPLUS/SHORTFALLS 2007-2011

b/f from 2007	2008	2009	2010	2011	Retained Surplus/Shortfall in 2011 Accounts
-£9,731	-£26,090	£15,767	£2,412	£28,260	£10,618

ANNEX 2

FACULTY OFFICE

NOTARIAL FEES AND EXPENSES

YEAR ENDED 31 DECEMBER 2011

	2011		2010	
	£	£	£	£
Notarial and Practising				
Certificates Fees		354,016		312,536
Notarial Admission Fees		6,400		6,900
		<u>360,416</u>		<u>319,436</u>
LESS:				
Expenditure – Indirect				
Registrar's Fees	8,756		7,163	
Rent and rates	27,596		25,511	
Light and heat	3,184		2,678	
Stationery & Copying	4,378		3,797	
Postage	2,062		2,008	
Telephone	2,000		1,949	
Repairs and maintenance	7,671		12,823	
Insurance	2,869		2,685	
Sundries	7,830		8,972	
Cleaning	2,774		2,729	
Catering	1,115		1,065	
Irrecoverable VAT	14,047		12,492	
	<u>84,282</u>		<u>83,872</u>	
Expenditure - Direct				
Salaries & N.I. (jointly employed staff)	168,003		157,458	
Entertaining	3,144		2,582	
Travel	24		1,650	
Crown Office fees	250		200	
Accountancy	2,846		2,197	
Printing and stationery	4,423		8,694	
Counsel's Opinion (John Dick – VAT)	0		1,762	
Sundry	254		654	
Admission Expenses	2,352		1,983	
Legal Services Board Levy	48,488		39,080	
Insurance	7,187		5,885	
	<u>236,971</u>		<u>222,145</u>	
		<u>(321,253)</u>		<u>(306,017)</u>
		39,163		13,419
Retainer due to the Master of Faculties		<u>(10,903)</u>		<u>(11,007)</u>
Surplus		<u>£28,260</u>		<u>£2,412</u>

The surplus of £28,260 has cleared the brought forward shortfall of £17,642. The surplus now carried forward stands at £10,618.

ANNEX 3

FACULTY OFFICE - CONTINGENCY FUND

INCOME ACCOUNT

YEAR ENDED 31 DECEMBER 2011

	£	2011	£	2010	£
CONTRIBUTION FROM NOTARIAL PRACTISING CERTS			14,570		8,075
Bank deposit interest			33		33
Less:					
Expenses for Disciplinary Hearings	48,229			1,041	
Provision for income tax	7			7	
Fees re Income tax payment	306			294	
			<u>(48,542)</u>		<u>(1,342)</u>
Retained shortfall/(surplus) for the year			<u>(£33,939)</u>		<u>£6,766</u>

BALANCE SHEET

AS AT 31 DECEMBER 2011

	£	2011	£	2010	£
ASSETS					
Deposit and current accounts	65,549			69,251	
Sundry Debtors	16,913			7,773	
			<u>82,462</u>		77,024
LESS LIABILITIES					
Sundry creditors	39,671			294	
Income tax payable	7			7	
			<u>(39,678)</u>		<u>(301)</u>
NET CURRENT ASSETS			<u>£42,784</u>		<u>£76,723</u>
REPRESENTED BY:					
Contingency Fund Capital Account					
Balance as at 1 January	76,723			69,957	
Retained shortfall/(surplus) for year	(33,939)			6,766	
Balance at 31 December			<u>£42,784</u>		<u>£76,723</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 23.12.11