

FACULTY OFFICE

APPLICATION TO LEGAL SERVICES BOARD FOR APPROVAL OF PRACTISING FEES 2013/14

Introduction

On behalf of the Master of the Faculties ('the Master') we are 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. Following approval by the LSB, the Master has made new rules governing the issue of a practising certificate to a notary (Notaries (Practising Certificates) Rules 2012) which come into force on 1st October 2013 in advance of this year's renewals. They provide a slightly more robust regime and make it clear that it is both an offence under S.14 of the LSA 2007 and Notarial Misconduct under the Notaries (Conduct and Discipline) Rules 2011 to practise otherwise than in possession of a current valid practising certificate. 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 the fee and contribution is determined from time to time by the Master. If a notary applies for a practising certificate part-way through a practising year he/she must pay the full amount which was due on 1st November of that period.

Proposals

- In the practising year 1st November 2012 - 31st October 2013 notaries paid the following fee and contribution:-

Practising certificate - £400
Contribution to Contingency Fund - £40

- In the practising year 1st November 2013 - 31st October 2014 the Master intends to set the following fee and contribution:-

Practising certificate - £450 (an increase of £50)
Contribution to Contingency Fund - £40 (no increase)

The Master 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 never had any 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. 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 2011 and 2012 are attached and itemise the purposes to which Faculty Office revenue has been applied (annex 2).

The items included in the 2012 expenditure reflect the nature of the expenditure which is likely to be made in 2013 save as outlined below.

Reasons for proposed fee and contribution

The Faculty Office operates a calendar year accounting period. The 2013 budget is also attached (annex 1). As the practising year does not coincide with either the LSB/OLC financial levy year or the Faculty Office 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 2013.

The Master was pleased to note that the charges levied by the LSB and the Office for Legal Complaints (“OLC”) have remained broadly static over the last two financial years.

Unfortunately, the difference between the numbers of notaries entering the profession and those retiring during the last practising certificate year has shown a net reduction of 46 in the number of practising notaries with a corresponding reduction in income to the Faculty Office. It is hoped that this reduction will be reversed in the next two years based on the numbers applying to join the Notarial Practice Course, the successful completion of which is a pre-requisite for admission to the profession.

In accordance with the commitments set out in the Developing Regulatory Standards return and taking account of criticisms levelled at a perceived “reactive” approach to regulation, the Master is committed to two significant initiatives to address our approach, namely the introduction of a regime of inspections of notarial practices and a complete revision and upgrade of the Faculty Office website. It is anticipated that the inspection regime will add an additional £20,000 annually to the Faculty Office expenditure. The upgrade of the website should be a one-off expense in this year’s budget of approximately £9,000.

In view of the slight reduction in numbers in the profession (which does not, of course, result in significantly less work for the Faculty Office) and the necessary increases in expenditure both for the specific projects outlined above and the general office expenditure, it is necessary to increase the level of the practising fee in order to maintain the service levels required of Faculty Office staff for the regulatory aspects of its work.

We propose to increase the level of the practising fee by 12.5% compared with the previous year. This represents a higher percentage increase than was requested and approved last year but, as can be seen from the budget, still only provides a small projected surplus on the year; any lesser increase would create a budget deficit. This takes into consideration the LSB and OLC Levies amounting to £24.00 per notary

with an additional £7.00 per notary attributable to the OLC levy, the additional costs of the planned inspections and website upgrade and budgeted increases in office expenses and staff costs.

The 2012 accounts for the Faculty Office Contingency Fund are attached (annex 3). Over several years claims on the Contingency Fund have continued to be low. A 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. A further small claim was made in 2012 to cover the costs of two investigations into allegations of Notarial Misconduct which did not give rise to proceedings in the Court of Faculties. This has given rise to the need for the current level which was introduced last year to be maintained in the current year in order that our intention to build the fund up to the level of at least £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 Joint Registrars attended a meeting of the Notaries Society Council in April to which they 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. Whilst the Master would have preferred to have maintained the practising certificate fee 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 introduction of an inspection regime and welcomes the upgrade of the website and have, therefore, accepted that this necessitates an increase in the practising certificate fee.

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 maintaining a fixed fee

We have opted to retain a fixed practising certificate fee as we are not yet persuaded that there is any practical alternative system which could be introduced which would be both fair and acceptable to the profession whilst at the same time not being a disproportionately burdensome exercise to try to calibrate notarial fees on some form of 'means-tested' basis; we consider that this could give rise to unfairness if the calculation was conducted without the fullest of information about the notary's practice.

This remains something which is kept under review as we are aware that there is a wide diversity of income within the notarial profession from those notaries whose

practices are very small and very much a “bolt-on” to their solicitor/barrister practice through to those whose principal or sole income derives from their notarial work. We will be seeking additional data from the profession as part of this year’s renewal exercise aimed at, inter alia, assessing the degree of this diversity of income which will feed into the discussion of a variable fee regime. Options in this regard will continue to be explored in consultation with the profession but we are not bringing forward formal proposals at this stage.

Diversity impact

Although increases in the fees charged will inevitably be unwelcome, we do not consider that the level of the fees will have an adverse impact on the diversity of the profession or those seeking to enter the profession. Additionally, without a variable fee (which remains 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 Joint Registrars, 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)

The image shows two handwritten signatures in black ink. The signature on the left is 'P.F.B. Beesley' and the signature on the right is 'H.J. Dellar'. Both signatures are written in a cursive, flowing style.

P.F.B.BEESLEY
JOINT REGISTRAR

H.J.DELLAR
JOINT REGISTRAR

10 July 2013

ANNEX 1

FACULTY OFFICE NOTARIAL BUDGET YEAR ENDED 31 DECEMBER 2013

NOTARIES	£	£
Income:		
98 certificates @ £400 (balance 2012/13)	39,200	
800 certificates @ £450	360,000	
Appointments (4 @ £540 & 6 @ £575)	5,610	
Overseas Appointments (10 @ £625)	6,250	
Exam Fees	0	
Notarial qualification information packs	3,100	
Certificates of Exemption (60 @ £75 & 20 @ £100)	6,500	420,660
Less Expenditure:		
Management Charge	307,853	
Direct Expenditure	82,150	
Legal Services Board fee 2012/13	26,230	416,233
Projected Notaries Surplus		£4,427

SUMMARY OF NOTARIAL SURPLUS/SHORTFALLS 2007-2011

b/f from 2008	2009	2010	2011	2012	Retained Surplus/Shortfall in 2011 Accounts
-£26,090	£15,767	£2,412	£28,260	-£3,534	£7,084

ANNEX 2

FACULTY OFFICE

NOTARIAL FEES AND EXPENSES

YEAR ENDED 31 DECEMBER 2012

	2012		2011	
	£	£	£	£
Notarial and Practising				
Certificates Fees		367,555		354,016
Notarial Admission Fees		6,150		6,400
		<u>373,705</u>		<u>360,416</u>
LESS:				
Expenditure – Indirect				
Registrar’s Fees	11,413		8,756	
Rent and rates	33,219		27,596	
Light and heat	2,661		3,184	
Stationery & Copying	5,548		4,378	
Postage	2,324		2,062	
Telephone	2,611		2,000	
Repairs and maintenance	11,877		7,671	
Insurance	3,063		2,869	
Sundries	9,468		7,830	
Cleaning	3,153		2,774	
Catering	1,498		1,115	
Irrecoverable VAT	17,367		14,047	
	<u>104,202</u>		<u>84,282</u>	
Expenditure - Direct				
Salaries & N.I. (jointly employed staff)	188,663		168,003	
Entertaining	3,402		3,144	
Travel	416		24	
Crown Office fees	540		250	
Accountancy	2,186		2,846	
Printing and stationery	9,149		4,423	
Counsel’s Opinion	9,300		0	
Judicial Review Insurance Costs	1,000		0	
Sundry	0		254	
Admission Expenses	2,124		2,352	
Legal Services Board Levy	38,699		48,488	
Insurance	7,187		7,187	
	<u>262,666</u>		<u>236,971</u>	
		<u>(366,868)</u>		<u>(321,253)</u>
		6,837		39,163
Retainer due to the Master of Faculties		<u>(10,371)</u>		<u>(10,903)</u>
Shortfall		<u>(£3,534)</u>		<u>£28,260</u>

The shortfall of £3,534 has reduced the accumulated surplus of £10,618 as at 31/12/2011 to £7,084.

ANNEX 3

FACULTY OFFICE - CONTINGENCY FUND

INCOME ACCOUNT

YEAR ENDED 31 DECEMBER 2012

	2012		2011	
	£	£	£	£
CONTRIBUTION FROM NOTARIAL PRACTISING CERTS		27,380		14,570
Bank deposit interest		23		33
Less:				
Expenses for Disciplinary Hearings	15,495		48,229	
Provision for income tax	5		7	
Fees re Income tax payment	300		306	
		<u>(15,800)</u>		<u>(48,542)</u>
Retained surplus/(shortfall) for the year		<u>£11,603</u>		<u>(£33,939)</u>
BALANCE SHEET				
AS AT 31 DECEMBER 2012				
	£	£	£	£
ASSETS				
Deposit and current accounts	27,787		65,549	
Sundry Debtors	26,906		16,913	
LESS LIABILITIES		54,693		82,462
Sundry creditors	300		39,671	
Income tax payable	5		7	
NET CURRENT ASSETS		<u>(305)</u>		<u>(39,678)</u>
		<u>£54,388</u>		<u>£42,784</u>
REPRESENTED BY:				
Contingency Fund Capital Account				
Balance as at 1 January	42,785		76,723	
Retained surplus/(shortfall) for year	11,603		(33,939)	
Balance at 31 December		<u>£54,388</u>		<u>£42,784</u>