

Approved regulator (AR)	BC/BSB		
Final application	Type of format received	Confirmed receipt of application	Website link
Receipt of final application on 21 December 2011	Post	Emailed	http://www.legalservicesboard.org.uk/Projects/independant_regulation/2011_practising_fee_applications.htm

Pre-draft application process including draft documents or correspondence received for assessment against the final application

	Yes or No	Description	Date
Did the LSB receive a draft application?	Yes	We received the draft budgets for 2012/13.	09/12/2011
Was there a pre-meeting between AR representatives and the LSB?	Yes	LSB and BC representatives met to discuss PCF proposals regarding the permitted purposes. The application contains an explanation of how the PCF income has been allocated to the permitted purposes.	14/10/2011
Do we have any initial concerns arising from the application?		We assessed the documents and were content with the information that was provided and asked for commentary to explain any significant changes and include within the application a description of how the permitted purposes apply to the BSB and BC budgets.	-
Have the concerns or issues of clarification (if any) been resolved?		-	-
Does the final application include a section on how the AR has dealt with the areas for improvement (if any) highlighted in the previous year's approval letter? If yes, have these issues been dealt with to the satisfaction of the LSB?	Yes	The application has addressed the concerns set out in the previous year's decision letter: i.e. consultation with non-commercial bodies was included, protocols for consultation between the BC/BSB when setting the fee and budget are explained. We requested additional information from the BSB on how the budget for central services is apportioned between BC and BSB and also if the total expenditure has been applied to the permitted purposes. BSB advised that the information can be gathered from pages 24, 26 and 27, however this information is not easily accessible as cross-referencing must be done to realise the figures. In future applications we would expect this information to be more easily accessible and provided as a part of the initial application summarised in a separate section.	10/01/2012

Summary

The LSB have the required information to consider the application against the PF Rules 2009 and criteria.

Overall level of concern No concern

Section 1: Developing the application and setting the budget

This section of the criteria refers to D10a & D11a /D11d of the Practising fee Rules 2009.

Criteria - application	Yes or No	Relevant information
Is there a description of how the application was developed and settled?	Yes	APPLICATION: sets out a clear process for setting the fee and budget which includes consultation and agreement with the BSB on their budget (pg 4-9). The application notes: 'The BSB will declare that its resources bid will be adequate to ensure delivery of its regulatory objectives and plans for the coming year' (page 4). LSB ASSESSMENT: we are content with the process set out by the BC which involves adequate consultation with the BSB.
Is there sufficient detail to make an assessment of 'reasonable care' when settling the application?	Yes	APPLICATION: the proposed 5% increase was lowered to 3% as a result of feedback from consultation (pg 8-9). The budget compilation timeline gives a clear summary of the process for determining PCF income (pg 24-25). LSB ASSESSMENT: we are content that the application was settled with reasonable care; the proposed PCF takes into account key factors including; directorate costs based on head-count, premises costs based on sq-footage, feedback from consultation etc.

Overall comments

No comment.

Evaluation

The application meets the criteria and evidence for Section 1: Developing the application that must be provided for this section in each PCF application.

Level of concern

No concern

Criteria - budget	Yes or No	Relevant information
Is there a description of how the budget was developed and settled?	Yes	APPLICATION: see previous questions. The budget is based on number of barristers as at 01/12/2011. LSB ASSESSMENT: the LSB is content that the application and budget have been developed and set with reasonable care. BSB were adequately consulted (this links to an area of improvement we asked the BSB to consider for this year's application). For future applications, the process for setting the budget is likely to be subject to further amendment (pg. 4)
Is there evidence that the budget was settled in light of immediate and medium term budgetary needs?	Yes	APPLICATION: Budget allowances are made for a number of factors including: a possible decline in numbers due to Legal Aid cuts (pg 3), the rise in applications for the low income discount (pg 57), the Pension deficit (pg 19-20), a £20k budget deficit (pg 25) & entity regulation costs (pg 1,13). LSB ASSESSMENT: we are content that the budget takes into account the immediate and medium term needs for the forecast year and following year (i.e. Entity Levy for set up costs raised this year only & Pension Levy may also be raised next year to cover the deficit).
Is there a description of contingency arrangements?	Yes	APPLICATION: General contingency is £80k for 2012/13; 0.6% of the total budgeted expenditure (pg. 11). BC have made provisions for requests for additional expenditure (pg. 5-6). LSB ASSESSMENT: Contingency adequately covers the deficit. LSB to review ARs contingency/reserves in 2012.
Does this include a section on the consultation with practitioners?	Yes	Refer to Section 4.

Overall comments

The Entity Regulation Levy is for the set up costs (£376k) of regulating ABS & will be apportioned to each fee paying barrister (pg 1, 10). Ongoing costs will be borne by ABS entities (pg.13). The information distributed to members with their fee notes currently lacks a clear and accurate description of the Entity Levy; this will be noted in the decision letter.

Evaluation

The application meets the criteria and evidence for Section 1: Setting the budget that must be provided for this section in each PCF application.

Level of concern

No concern

Section 2: Permitted purposes

This section of the criteria refers to D10b & D11e/D11b of the Practising fee Rules 2009.

Criteria	Yes or No	Relevant information
Is there evidence that the income raised through the PCF charge are applied solely to the permitted purposes ?	Yes	APPLICATION: the application provides an analysis of the expenditure categories for the consolidated BC budget (pg 27). It shows that 100% of BSB expenditure (£7,086,000) is permitted purpose activity of which £4,005,600 is recouped from PCF income and the remaining from other income sources. BC undertake permitted purposes activity which is also paid out of the PCF. LSB ASSESSMENT: we are content that enough information is presented to explain that the PCF income has been applied solely to the permitted purposes for BC and BSB.
Does it include a budget that shows the anticipated income from practising fees?	Yes	APPLICATION: on page 27 the total PCF-required is £7,528,400 (the figures also show a £20k deficit/shortfall). Of the PCF income, BSB expenditure accounts for £4,005,600 with the remaining PCF income allocated to the BC for permitted purpose activity.

Criteria	Yes or No	Relevant information
Does it include an analysis of expenditure against the permitted purposes?	Yes	APPLICATION: on page 27 the column labelled Permitted Purposes ("P.P.") gives an indication of what portion of each expenditure category is allocated to permitted purpose activity e.g. Regulation: BSB is 100%. It also gives an analysis of what proportion of the BC activity or expenditure category is apportioned to permitted purpose activity e.g. Representation: IT Panel is 85%. LSB ASSESSMENT: the application provides a clear analysis of how the PCF income has been split between BSB and BC activities. It also gives a further analysis of the proportion (%) of each expenditure category that relates to permitted purpose activity.
Does it include an analysis of income and expenditure related to all other expected income to be applied to permitted purposes?	Yes	APPLICATION: page 27 shows that 100% of the BSB's expenditure (£7,086,000) relates to permitted purpose activity of which £4,005,600 is recouped from PCF income and the remaining is sourced from other income sources e.g. the total amount of income collected through the Entity Regulation Levy appears in the BSB budget under non-PCF income (£376,000). LSB ASSESSMENT: we are content that the information clearly sets out the other income to be applied to the permitted purposes.

Overall comments

No comments.

Evaluation

The application meets the criteria and evidence for Section 2: Permitted purposes that must be provided for this section in each PCF application.

Level of concern No concern

Section 3: Regulatory functions

This section of the criteria refers to D10c D10d & D11c of the Practising fee Rules 2009.

Criteria	Yes or No	Relevant information
Is there clarity and transparency of how the PCF income collected by practising fees is applied to permitted purposes which are <u>regulatory functions</u> (not representative)?	Yes	APPLICATION: page 27 gives the full BSB regulatory budget of which is partially sourced from PCF income. Page 40 gives a description of the regulatory activity anticipated for the 2012/13 year and includes a description of the BSB work programme to be delivered in 2012/13 and an explanation of the planned expenditure cuts to be made within year. LSB ASSESSMENT: we are content with the description provided on the regulatory functions of the AR.
Is there a description of shared services?	Yes	APPLICATION: page 26 gives a breakdown of the central services expenditure. Page 41 indicates that central services have increased due to the need for more office space (attributed to BSB staff), additional IT support and research project expenditure. LSB ASSESSMENT: we are content with the additional information received from the BC on 09/01/2012 (see overall comments below).

Criteria	Yes or No	Relevant information
Is there clarity and transparency of how the PCF income collected by practising fees is applied to permitted purposes which are <u>not regulatory functions</u> ?	Yes	APPLICATION: page 27 sets out the budget for the BC's non-regulatory activity classified as permitted purposes. Page 28-39 provides a detailed analysis of what proportion (%) within each expenditure category relates to activity which is permitted purpose. E.g. 80% of activity for the International Committee falls within the definition of permitted purposes; therefore 80% is funded by PCF income and 20% by other income (pg.30). LSB ASSESSMENT: we are content with the BC's self-analysis of non-regulatory activity classified as permitted purposes. It is a thorough piece of analysis backed up by good examples of their activities. The BSB is the only AR to complete an analysis to this level of detail. We acknowledge that this type of analysis is not an exact science & although we could possibly challenge some of the numbers in the analysis, we acknowledge that the BC are in the best position to advise on their non-regulatory activities and how they apply to the permitted purposes.

Overall comments

The BC provided further information on how the budget for central services is apportioned between BC and BSB and also if the total expenditure has been applied to the permitted purposes. BSB advised that the information can be gathered from pages 24, 26 and 27, however this information is not easily accessible as cross-referencing must be done to realise the full figures. In future applications we would expect this information to be more easily accessible and provided as a part of the initial application summarised in a separate section.

Evaluation

The application meets criteria and evidence for Section 3: Regulatory Functions that must be provided for this section in each PCF application.

Level of concern: **No concern**

Section 4: Clarity and transparency

This section of the criteria refers to D10e of the Practising fee Rules 2009 & section 51(b) of the Act

Criteria	Yes or No	Relevant information
Consultation with members		
Does the application include a description of their consultation undertaken with their members mandated to pay practising fees?	Yes	APPLICATION: Consultation lasted 4 weeks (17/11/11 to 12/12/11). The budget and PCF proposals were posted to the BC website. An invitation was sent to the profession (individuals or as an employer, SBA or Circuit representatives) inviting comment on the proposals (pg 15-23). LSB ASSESSMENT: we are content with the process adopted by the BC.
If yes, does the description of the consultation process include transparency and clarity of how the fee level has been set and how the money collected will be used?	Yes	APPLICATION: see details above. LSB ASSESSMENT: the information provided to the profession was clearly detailed, explaining the fees to be paid, the rationale for setting the fees, the full budget details and a summary of the consultation response.
If yes, does the application also include a description of how that feedback influenced the decision-making and policy development processes?	Yes	APPLICATION: 75 responses were received. The majority were largely against the 5% PCF increase (pg 15-16) and there was general opposition to the Pension Levy. In light of the responses received, the BC revised the fee increase down to 3% (below inflation 4+%) accompanied with expenditure cuts (pg. 40). LSB ASSESSMENT: the level of responses received suggests that the consultation process was effective. It is encouraging that the BC changed their proposals in light of the responses. The justification to keep the Pension Levy appears justified as it reduces the deficit and is substantially lower than previous years (pg 1-2).

Criteria	Yes or No	Relevant information
Consultation with members		
In terms of the level of information provided to members, does the application include the recommended use of the 'Council Tax bill' analogy and/or another form of web-based linked information?	Yes	APPLICATION: letters will be sent to the profession along with a note on how the PCF is compiled (see pg 42-55). LSB ASSESSMENT: although the format adopted does not follow a 'Council Tax' bill analogy, as suggested in our criteria, it does provide the essential information for each fee paying practitioner. As mentioned in Section 1 of the Assessment Tool, more information is needed on the Entity Levy.
If yes, when was this information issued to the mandated members paying the practice fees i.e. as the fee note issued or shortly afterward?	Yes	APPLICATION: a final copy of the Budget and PCF proposal will be placed on the BC website and information will be sent out with the fee note. LSB ASSESSMENT: we are content with this process.

Overall comments

No comments.

Evaluation

The application meets the criteria and evidence for Section 4: Clarity and Transparency that must be provided for this section in each PCF application.

Level of concern: **No concern**

Section 5: Regulatory and Equality Impact Assessment (EIA)

This section of the criteria refers to D11f of the Practising fee Rules 2009

Criteria	Yes or No	Relevant information
Does the application include a regulatory or diversity impact assessment?	Yes	APPLICATION: the 3% increase to PCF has been applied evenly to all bandings to ensure no disproportionate impact on any particular group. A fee Waiver Scheme is offered to low income earners and a higher proportion of women and BME tend to apply for their waiver. In 2010.11, approx 1,300 practitioners were under the scheme (pg 56-57). LSB ASSESSMENT: we are content the proposals pose no disproportionate impacts on any particular group and welcome the continuation of the Fee Waiver Scheme.
If no, does the application include a description of how the proposals may potentially impact on various groups (this include the impact of increased fees if appropriate)?	Yes	APPLICATION: see above. LSB ASSESSMENT: see above.
Does the application include a description of how the proposals have been developed in light of the Regulatory Objectives as set out in the Legal Services Act 2007 and Better Regulatory principles?	Yes	APPLICATION: page 58-59 gives a full assessment of the proposals against the regulatory objectives. LSB ASSESSMENT: we are content that the proposals have been developed in light of the RO.

Overall comments

No comment

Evaluation

The application meets the criteria and evidence for Section 5: Regulatory and Equality Impact Assessment that must be provided for this section in each PCF application.

Level of concern:

No concern

Section 6: Consultation with non-commercial bodies and others

This section of the criteria refers to D12 of the Practising fee Rules 2009 & Section 51 (7) (a) of the Act

Criteria - non-commercial bodies	Yes or No	Relevant information
Does the application include a description of steps the AR has taken to ensure the impacts of the persons providing non-commercial legal services have been considered when setting the fees?	Yes	APPLICATION: consultation with non-commercial bodies were included as part of the overall consultation process (pg 60). LSB ASSESSMENT: we are content with the process adopted by the BC to consult non-commercial bodies.
Has the AR shared details of the practising fee level with appropriate bodies such as the Law Centres Federation, Citizens Advice and Advice Service Alliance in advance of the submission of the application?		N/A
Have the non-commercial bodies provided any response to the details shared to them by the AR?	Yes	APPLICATION: responses were received from some non-commercial bodies e.g. Government Legal Service. No submissions were received by charitable bodies. LSB ASSESSMENT: responses from non-commercial bodies were considered and noted by the BC. In response to one of the key issues raised on the difference of PCF paid by the employed and self-employed Bar, a review of PCF bandings will be undertaken in 2012. We also welcome the PCF discounts made available to those working exclusively for a charity.

Overall comments

Page 16 of the application confirms that the PCF collection arrangements will be subject to review during 2012 and consultation will be undertaken on any proposals with the profession. The LSB will include a reminder in the PCF decision letter that should any changes to the BC regulatory arrangements arise as a result of this review; please discuss with the Rule Change Team in advance of submitted any subsequent rule change or exemption application.

Evaluation

The application meets the criteria and evidence for Section 6: Consultation with non-commercial bodies that must be provided for this section in each PCF application.

Level of concern: **No concern**

Final assessment and decision

Summary of LSB assessment - i.e. Approval and/or approval with conditions or rejection
The PCF Team recommends approval of the application, with points of improvement noted in the decision letter.

Criteria - others	Yes or No	Relevant information
Have we considered if we need to consult with anyone else on this application?		APPLICATION: n/a. LSB ASSESSMENT: we did not consider it necessary to consult any other group.
If yes, what consultation has taken place and with whom?		N/A
What was the outcome of this exchange i.e. Do we have any immediate concerns that has the potential to delay the approval of the application?		N/A

Overall comments

No comments

Evaluation

The application meets the criteria and evidence for Section 6: Consultation with others (if appropriate) that must be provided for this section in each PCF application.

Level of concern: **No concern**