

To:	Board	
Date of Meeting:	27 January 2011	Item: Paper (11) 06

Title:	Evaluation of the Practising Certificate Fee (PCF) approval process for 2010
Workstream(s):	Workstream E: Securing independent regulation
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Status:	Unclassified

Summary:

This paper provides a summary of an evaluation exercise conducted to review the LSB's PCF approval process for 2010 under Section 51 of Legal Services Act 2007 (**the Act**). The evaluation exercise was in two parts: 1) an internal review of the PCF approval process by the PCF Team, which included a self-analysis of the improvements to be made to the process for 2011; and 2) an online survey seeking feedback from the Approved Regulators (**AR**), both the representative and regulatory arms, and LSB staff who were involved in the process. This paper is to inform the Board of the main findings from the evaluation exercise and asks the Board to note the recommended approach for 2011. The paper also recommends continuing to delegate authority to approve PCF applications to the Chief Executive, with appropriate consultation with the nominated Board Members on each application considered in 2011.

Risks and mitigations	
Financial:	None.
FoIA:	None.
Legal:	None.
Reputational:	None.
Resource:	Resource currently considered sufficient.

Consultation	Yes	No	Who / why?
Board Members:	✓		The nominated Board Members for this project are Terry Connor and Barbara Saunders. A copy of the paper was emailed in advance.
Consumer Panel:		✓	Not relevant to the work of the Consumer Panel.
Others:	None.		

Recommendation(s):

The Board is invited:

- (1) to note the main findings from the evaluation of the PCF approval process for 2010
- (2) to note the recommended approach to the PCF approval process for 2011
- (3) to agree to continue to delegate authority to approve PCF applications to the Chief Executive, subject to appropriate consultation with the nominated Board Members.

LEGAL SERVICES BOARD

To:	Board		
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Evaluation of the PCF approval process for 2010

Executive Summary

1. For the 2010 s.51 PCF approval round, the LSB adopted the approach of working to individual ARs' budget cycle timetables to receive, consider and approve each s.51 application submitted to the LSB in 2010. In particular, we committed to a focus on transparency and compliance under s.51 of the Act which requires PCF income to be attributed solely to one or more of the 'permitted purposes'.¹
2. All of the s.51 PCF applications submitted by ARs in 2010 have met the LSB's criteria for approval. This paper details the main findings from an evaluation ('lessons learned') exercise conducted to review the LSB's PCF approval process for 2010. This paper also asks the Board to note the recommended approach to the s.51 PCF application process for 2011 and to agree to continue to delegate authority to approve PCF applications to the Chief Executive. The full Board will be kept updated on the progress of each s.51 application received in 2011 and the decisions we make through the regular Chief Executive's progress report.

Recommendation(s)

3. The Board is invited:
 - (1) to note the main findings from the evaluation of the PCF approval process for 2010
 - (2) to note the recommended approach to the PCF approval process for 2011
 - (3) to agree to continue to delegate authority to approve PCF applications to the Chief Executive, subject to appropriate consultation with the nominated Board Members.

Background

4. Section 51 of the Act provides that the LSB approves the level of the mandatory PCFs set by each AR.
5. The LSB's Practising Fee Rules 2009 were published along with the supporting consultation document on 10 December 2009. These Rules set out how ARs are allowed to spend funds raised from fees paid by lawyers as a condition of authorisation to practise. The rules also explain how the LSB considers and approves applications from ARs when they propose a level at which to set the PCFs.
6. The Chief Executive was delegated authority to approve s.51 PCF applications under the Scheme of Delegations approved by the Board on 29 June 2010.

¹ For a list of the permitted purposes, see s.51 of the Act and LSB's Practising Fee Rules 2009.

LSB approach for 2010

7. For the 2010 PCF approval round, the LSB adopted the approach of working to individual ARs' budget cycle timetables to receive, consider and approve each s.51 application submitted to the LSB in 2010.
8. In particular, we committed to a focus on transparency to ensure ARs provided an explanation of how their fees were being spent to their members required to pay a PCF. We also committed to ensuring that PCF income collected by ARs was attributed to one or more of the 'permitted purposes' as set out in s.51 of the Act.
9. All of the s.51 PCF applications received from ARs in 2010 have been approved. The letter approving the level of PCF, addressed to each AR, included areas the LSB considers improvements should to be made in the application submitted in 2011.

Evaluation exercise

10. We acknowledge that the 2010 PCF approval process was a first for the LSB and a transitional year for many of the ARs. We therefore committed to conducting an evaluation exercise to identify the parts of the PCF process that worked well in 2010 and where improvements can be made to the process for 2011.
11. To ensure we learn from the experience of both the LSB and the ARs in our first year of using our s.51 powers the evaluation exercise was conducted in a two part process. First, an internal review was conducted by the PCF Team to identify improvements that could be made for the process for 2011, from self-analysis of the PCF process for 2010. Second, an anonymous online survey to gather feedback was conducted with ARs, including both representative and regulatory arms, and LSB staff / Board Members who were involved in the PCF process.²

Main findings from the evaluation exercise

Findings from the internal review

12. The LSB's approach towards encouraging better transparency was largely adopted by ARs. In particular, the process undertaken by The Law Society (**TLS**) and Solicitors Regulation Authority (**SRA**) presented a significant step forward from previous practice in providing their members with transparency of the PCF-setting arrangements and how the collected money is being used. We also acknowledge the open and transparent process undertaken by The Bar Council (**TBC**) and Bar Standards Board (**BSB**) when consulting on the proposed changes to the PCF charging structure. We are satisfied that the members of the employed and self-employed Bar who were affected by the proposed changes to the charging structure have had their views properly considered and that their feedback has contributed significantly to the final decision-making process.
13. In addition, in line with the Better Regulation Principles of transparency and accountability, the LSB has published the applications and supporting documents we received and decisions we made on our website.
14. The LSB's focus on ensuring that PCF income was attributed solely to one or more of the 'permitted purposes' led us to challenge some of the ARs. Our concern was the policy and legal acceptability of some of the ARs applying PCF

² The results or raw data from the evaluation exercise is available on request.

monies to costs associated with purposes which could not be shown definitively to be 'permitted purposes'. We have also voiced concern at the allocation of PCF income to central services that serve ARs in their membership as well as regulatory duties. We have raised this issue with TLS/SRA and TBC/BSB and will consider this further in the context of the 2011 approval round.

15. Some of the s.51 applications received in 2010 were led by the representative arms, which seems inconsistent with LSB's independence requirements. We have been clear that taking forward the application for 2011 should rightly sit with the regulatory body. We have been consistent in our message to all ARs on this point.
16. The delegated approval process required consultation on each application received with members of the LSB's Senior Management Team (**SMT**). The Director of Finance and Services was originally not included, however, we found that his knowledge of ARs' budgets, in particular the levy contributions, was very useful in processing s.51 applications. We will include the Director of Finance and Services, therefore, in the list of SMT members to consult with on each s.51 application received in 2011.

Findings from the survey

17. We received a total of 12 responses to the anonymous online survey³. The results from the survey yielded several key points to note⁴, including:
 - a. there was general agreement that the LSB's process for receiving, considering and approving applications worked well (10 agreed/strongly agreed, 1 neither agreed nor disagreed, 1 disagreed);
 - b. a consensus that the LSB should agree clear milestones with ARs, including deadlines for ARs to submit applications and deadlines for the LSB to provide a decision (11 agreed/strongly agreed, 1 neither agreed nor disagreed);
 - c. respondents felt the level of communication with the LSB was adequate during each stage of the process (9 agreed/strongly agreed, 3 neither agreed nor disagreed);
 - d. some parts of the LSB's criteria document for approving PCFs were unnecessary or burdensome (5 agreed/strongly agreed, 7 neither agreed nor disagreed);
 - e. a sample template of a s.51 application would be useful (7 agreed/strongly agreed, 4 neither agreed nor disagreed, 1 disagreed).
18. The respondents were provided with the opportunity to make additional comments. A summary of the main issues to note include:
 - a. due to the late submission of some applications, there was little time for Board Member input. A suggestion was also made to have a minimum period of three weeks for the LSB to consider an application;

³ The respondents were requested to indicate the type of organisation to which they belonged. A total of five respondents were from the LSB, three respondents were from regulatory arms, one respondent was from a representative arm and three respondents chose the option 'prefer not to say'.

⁴ Please refer to **Annex A** for further information on the breakdown of responses by type of respondent for the key points highlighted in paragraphs 17a to e.

- b. splitting costs by a specific 'permitted purpose' did not add value and makes the splits unduly arbitrary where items relate to multiple purposes.

Conclusions from the evaluation exercise

19. The main conclusions from the evaluation exercise are as follows:

- a. We have some way to go in terms of ensuring all ARs have adequate transparency with their members charged with paying a PCF. We have indicated in each approval letter sent to the ARs the areas where we consider improvements need to be made before applications are submitted for 2011; transparency being one of the main issues raised in these letters.
- b. Ensuring that PCF income is attributed solely to one or more of the 'permitted purposes' will be further focused on in this year's round, particularly in terms of the regulatory and representative arms' central or shared services. As previously mentioned, TLS/SRA and TBC/BSB will be monitored for compliance.
- c. We will monitor the ARs for compliance around independence issues, ensuring that taking forward the application for 2011 sits with the ARs' regulatory body. This issue is also being picked up through the Internal Governance Rules (**IGR**) process.
- d. To continue to work with each AR's own planning and budgeting cycles/timetables. The LSB and AR representatives to agree milestones for submission of s.51 applications and a minimum three-week period for LSB to consider the application and make a decision. This minimum three-week period will also ensure there is enough time to seek Board Member input early in the process.
- e. The ARs to be encouraged to adopt a sample application template; this will not be mandatory. The sample template may set out best practice examples of transparency with members, from the 2010 PCF process. It may also provide some guidance as to what the LSB expects in terms of evidence that PCF income has been attributed solely to one or more of the permitted purposes.
- f. To consult with the LSB Director of Finance and Services, in addition to other SMT members, on each s.51 application received in 2011.

20. The conclusions from the evaluation exercise have helped form the outline of the recommended approach to the s.51 PCF application process for 2011.

21. The Review consciously confined itself to process issues and did not re-open the question of whether the LSB should take a more interventionist role in assessing the value for money of the PCF. The Executive continues to believe that the current approach of focussing on process issues and legal compliance is right. Looking at the budget in line-by-line detail would imply a more directive approach to oversight regulation than is implied by the general tenor of the legislation and shift our scrutiny of the ARs more towards questions of efficiency, rather than effectiveness and outcomes. The general nature of the work programme outlined

for 2011/12 will enable us to identify and pursue areas of possible under-investment in regulation without making a more general change of stance.

Recommended approach to the s.51 PCF application process for 2011

22. It is recommended that the approach outlined in the following section of this paper is noted by the Board:
- a. The LSB to monitor ARs for compliance around PCF income attributed to one or more of the 'permitted purposes'.
 - b. The LSB to monitor ARs for compliance around independence issues with the submission of s.51 PCF application for 2011 sitting with the regulatory arm.
 - c. The LSB to agree key milestones with each AR on the submission and consideration of s.51 PCF applications.
 - d. The LSB to design a non-mandatory sample application template for ARs, setting out best practice examples of transparency with members and guidance on a simple way of demonstrating 'permitted purpose' compliance.
23. It is recommended that the Board agrees to continue to delegate authority to approve PCF applications to the Chief Executive, subject to appropriate consultation with the nominated Board Members.
24. The full Board will be kept updated on the progress of each s.51 application received in 2011 and the decisions we make through the monthly Chief Executive's progress report.

Further work

25. We will develop Key Performance Indicators (**KPI**) for 2012 based on the evaluation of the process in 2011.
26. We will develop a communications strategy around the s.51 PCF process for 2010 which will include an article in the trade press highlighting the achievements made around transparency. The article, to be published in February/March 2011, may detail pie-graphs showing ARs' total income split into PCF and non-PCF revenue, with a separate breakdown of PCF income attributed to the permitted purposes for each AR.

18.01.11

Breakdown of responses by type of respondent to the key points of the survey

An anonymous online survey was conducted in December 2010; we received a total of 12 responses (5 LSB; 3 AR-regulatory arms; 1 AR-representative arm; 3 'prefer not to say'). To demonstrate which group said what, an analysis of the key points of the survey has been broken down by 'respondent group' in the paragraphs below. The raw survey data is available on request.

Survey Question 2 (paragraph 17a of this report)

The LSB's process for receiving, considering and approving s.51 applications worked well.

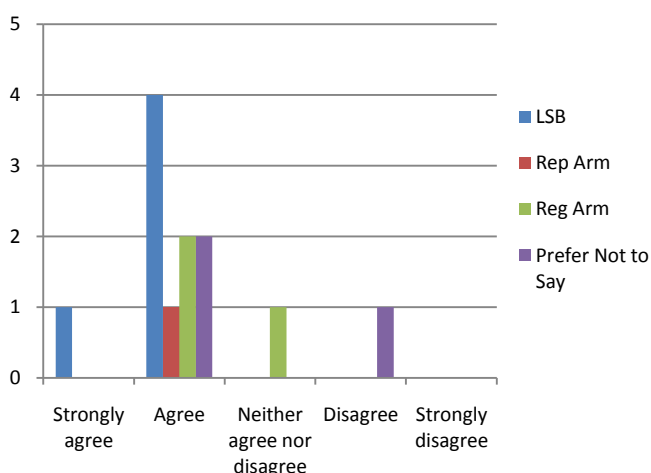
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
LSB	1	4			
Rep Arm		1			
Reg Arm		2	1		
Prefer Not to Say		2		1	
Total	1	9	1	1	0

Survey Question 3 (paragraph 17b of this report)

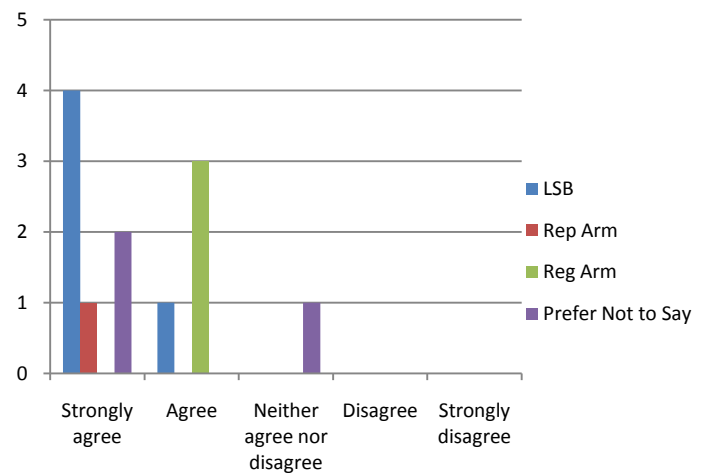
Next year, the LSB should agree clear deadlines with ARs. This would include setting a date for each AR to submit their application and a deadline for the LSB to process and issue a decision. The agreed deadlines would be tailored to each AR's individual budget cycle timetables, so it is clear what information is required and when it is required.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
LSB	4	1			
Rep Arm	1				
Reg Arm		3			
Prefer Not to Say	2		1		
Total	7	4	1	0	0

Survey Question 2 (paragraph 17a of this report)



Survey Question 3 (paragraph 17b of this report)



Survey Question 4 (paragraph 17c of this report)

I feel the level of communication with the LSB was adequate during each stage of the approval process from submission of the application, consideration of the application and issuing the final decision.

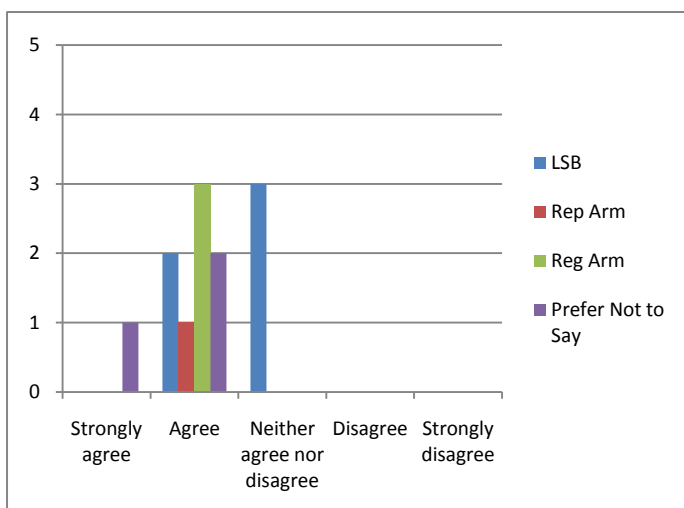
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
LSB		2	3		
Rep Arm		1			
Reg Arm		3			
Prefer Not to Say	1	2			
Total	1	8	3	0	0

Survey Question 7 (paragraph 17d of this report)

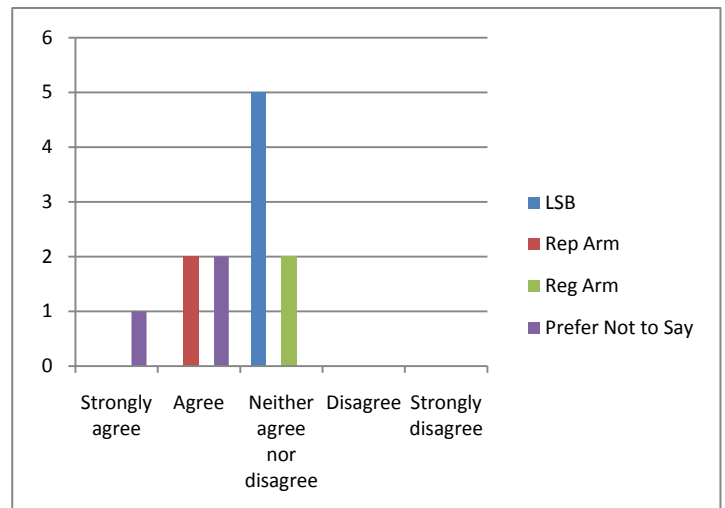
There were some parts of the LSB's criteria document that were unnecessary or burdensome.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
LSB			5		
Rep Arm		2			
Reg Arm			2		
Prefer Not to Say	1	2			
Total	1	4	7	0	0

Survey Question 4 (paragraph 17c of this report)



Survey Question 7 (paragraph 17d of this report)



Survey Question 9 (paragraph 17e of this report)

I would find it helpful if the LSB were to produce a sample template for s.51 applications next year.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
LSB		2	3		
Rep Arm			1		
Reg Arm		3			
Prefer Not to Say	2			1	
Total	2	5	4	1	0

Survey Question 9 (paragraph 17e of this report)

