



Approval of 2020 Practising Certificate Fee (PCF) application made by the Faculty Office to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

1. The LSB has approved an application made by the Faculty Office (“**FO**”) on behalf of the Master of Faculties (“**the Master**”) to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required under section 51 of the Act. The Master is an approved regulator and the FO is the regulatory arm to which the Master has delegated its regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)¹. The Rules² set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](#) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application³.
5. This notice sets out the decision taken, including an assessment of the PCF application.

Overview of PCF application and decision

6. In line with last year, the FO application for the approval of practising fees for 2020/21 is made for approval of a practising fee for each notary based on the turnover generated by their notarial practice, in bandings reflecting their turnover. Last year,

¹ https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF

² Ibid, Rules 10 and 11.

³ https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF

the FO moved away from a model whereby all notaries were charged a single flat fee, to a model which was designed to more fairly reflect the significant variation in turnover amongst the profession.

7. The proposed fees for 2020/21 are:

Turnover	PCF (2020/21)	PCF (2019/20)	Contingency fund contribution 2020/21
Up to £15,000	£470	£450	£0
Up to £50,000	£580	£560	£0
Up to £150,000	£820	£800	£0
Up to £300,000	£1,020	£1,000	£0
Over £300,000	£2,270	£2,250	£0

8. There are approximately 750 registered notaries. The FO proposes to increase the PCF across all bands by £20 and to reduce the Contingency Fund contribution from £20 (in 2019) to £0 (in 2020). This is resulting in no net increase in the total fee.
9. The increase in PCF is expected to result in a total of £456,905 being collected in 2020/21, which marks an increase from £428,626 in 2019/2020. We held further communication with the FO as regards this increase in the PCF income in the context of the pandemic and the projected 30% reduction in income across the profession the FO reports. The FO confirmed that it took consideration of the impact of Covid-19 in the budgeting process. We note the uncertainty of the pandemic and the FO's desire to refrain from a burdensome increase in fees in these exceptional circumstances.
10. However, we note that in 2016 the FO identified a deficit in its accounts comprising money owed to the non-regulatory arm of the FO. Despite a stated intention to reduce the deficit since 2016, it has in fact risen since then and the cumulative deficit now stands at £242,996.
11. As part of the application, the FO provided indicative budgets for the years ending 31 March 2021, 2022 and 2023. The FO expect a surplus in the current financial year (£36,645) and in the following two years (£70,601 for year ending 31 March 2022 and £67,130 for year ending 31 March 2023) which are intended to reduce the deficit and, in due course, provide a reserve.
12. The LSB's decision is to approve in full the levels of the 2020/21 fee determinations for practising certificates charged to individual notaries as set out in the FO application for the approval of 2020/21 fees. However, as a result of the growing deficit we are concerned about the financial viability and independence of the regulatory functions of the FO.

LSB assessment

Clarity and transparency of overall budget setting

13. The LSB is satisfied with the budget setting process outlined in the application. The application clearly sets out the income and expenditure levels of the FO. The FO budget is based on:

- Income from:
 - annual practising certificate fees
 - admissions to the FO in overseas jurisdictions and a small income from annual registration from the Channel Islands
 - notarial packs and certifications of exemption
- Expenditure on:
 - levies for the LSB, Office for Legal Complaints (OLC) and the Office for Professional Body Supervision (OPBAS)
 - Legal Choices website
 - PI Insurance
 - other direct expenses (e.g. the final stage of its IT project, the expenses associated with entity regulation/inspections).

14. Upon further enquiry, the FO provided the LSB with documentation providing detail of its expenditure. We consider this information necessary for the assessment of the budget setting process and we expect this to be provided alongside in future applications and not upon requesting follow up materials.

Consideration of immediate and medium term needs

15. In January of each year the Master sets the priorities for the FO, which are published. The Master's priorities are directed principally to the FO and amount to a 'business plan' for the year whilst recognising that there will be other matters requiring attention that will arise throughout the year. FO priorities for 2020 include:

- The LSB (Regulatory Standards and Diversity) action plans
- The OPBAS action plan
- Reduction of the notarial deficit
- Efficiency improvements (including introduction of KPIs and amended overseas admission procedures)
- To consider and implement recommendations of qualifications working group
- To take forward proposals for incorporation of the FO
- Practice Authorisation (entity regulation)

16. The introduction of bandings undertaken in the last twelve months is expected to be retained and this is reflected not only in the PCF application for the coming year, but the budget projections to March 2023. There will be clarification issued to practices to help them determine what constitutes assessable turnover.

17. The number of registered notaries is relatively consistent and therefore predictable. However, the numbers falling within each banding is more variable. Average turnover

reduced in 2019-20 against the 2018-19 baseline, resulting in an actual shortfall of £33,194, an increase from the budgeted £28,854 shortfall.

18. The application states that 45% of the profession benefited from a cost reduction as a result of the introduction of its new banding system in 2019. For 2020-21, the FO is expecting a 30% drop in turnovers across the profession due to Covid-19, this will result in some movement between bandings.
19. Despite a drop in turnover for notaries the FO is expecting an increase in its revenue, largely as a result of the increase in PCF level and the fact that despite income drops the majority of notaries will remain within the same band.
20. In terms of taking the medium and long term needs into account, we have concerns in relation to the longer term plans to reduce the deficit and build up reserves, as set out further below at paragraphs 23 to 30.

Contingency fund arrangements

21. This year the contingency fund contribution is proposed to reduce from £20 to £0. The application sets out that this has been made possible because the Faculty Office has not seen any significant call on the contingency fund.
22. The LSB expected the Faculty Office to reduce the contribution required for the contingency fund if calls on the fund were sufficiently low. As the contingency fund stands at £154k and the minimum fund level is set at £100,000 the Faculty Office has concluded that no contributions are currently needed.

Reserves arrangements and progress made on reducing the long-standing deficit

23. The FO has confirmed through this year's application that its target for reserves is £0.5m, equivalent to one full year's running costs. For a more substantial business, 12 months would be regarded as an unduly high level of reserves, but the position of the FO has not settled since it switched from cash to accruals accounting, and given the prevailing context of wider economic uncertainty, we do not consider a target of £0.5m to be unreasonable. It should also help the Faculty Office to achieve full regulatory independence, as it is clear that the historic deficit it has managed in recent years has been financed from the non-regulatory arm rather than from internal reserves.
24. However, we continue to have concerns about how the FO has managed its deficit to this point and how it proposes to achieve this target level of reserves, based on the projections included in this application.
25. In its PCF application of 2016, the FO had stated that it aimed to reduce the deficit of £208,000, year on year, in order to reach the point where the regulatory arm becomes fully self-funding. As of March 2020, the accumulated deficit has actually increased and now stands at £242,996. This increase raises concerns as to how the FO has been managing its finances and resources and is directly relevant to the Well-Led

outcome (WL2)⁴ under our regulatory performance framework and against which we assess the FO's performance. As part of our performance assessment under the framework this year, we are undertaking an in-depth review of the FO against the Well-Led standard.

26. This year, the FO has sought approval for proposed fees, which is part of a three-year projection based on continuation of a similar level of fees, that would allow a reduction of the deficit to £68,620 by March 2023. In our assessment, these projections indicate that at the current rate it would require a further year to reach a breakeven position, and probably seven further years to achieve a retained surplus of £0.5m (the target level of reserve). That would be 2031, more than a decade away. A reserves target ought to be achievable within a strategic cycle not exceeding five years. To achieve the required contingency by 2025 would require additional average PCF contributions in excess of £100 per practice. This means that the proposed PCF levels are insufficient to achieve this.
27. We asked the FO how it envisages achieving the required reserves by 2025, given this would require additional average PCF contributions. In its response the FO acknowledged that this is not achievable unless the deficit is cleared by a substantially increased PCF or an increase in the number of notaries. However, the FO notes that increasing the PCF was not felt a viable option in the current climate of the pandemic, particularly after considering the comments from the notarial profession during the consultation process.
28. We acknowledge the uncertainty that the pandemic has brought, which has resulted in recognising the FO's decision not to apply a greater increase in fees for the notarial profession this year. Notwithstanding this, it is of concern that the FO has presented us with a target rate for reserves that is not achievable in a reasonable timeframe based on the three-year projections that it has provided us with. This serves to further increase our concerns about how FO is managing its finances which, as set out above, is relevant to our assessment of the FO in relation to outcome WL2 under the regulatory performance framework. It is of note that in its application and follow up material, the FO has not provided any compelling explanation of how it proposes to reach its target level of reserve in a reasonable timeframe.
29. The FO's application next year must provide a much greater degree of confidence in the way in which it is managing its resources. In the meantime, we will assess the FO's performance in relation to the Well-Led standard, including WL2, through the in-depth review of its performance which started in September 2020. Depending on the findings of the review any actions for the FO in this regard, will need to be addressed.
30. We further note that, whilst the FO has confirmed its target for reserves in writing, we have not had sight of a documented reserves policy. This was clearly set out as an expectation for this year's application and it is of concern that it has not been received. Next year we will expect to see a document reserves policy that not only

⁴ The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.

tells us what the aim is but also sets out the FO rationale for reserves. In producing a documented policy, the FO should also review whether its stated aim of a reserve in excess of a full years operating income remains appropriate or necessary.

Consultation on PCF

Summary

31. In July 2020, the FO published a month-long consultation on the proposals for a reduction of £20 (to £0) in the required contribution to the contingency fund and a corresponding increase of £20 across all the bands in the practising certificate fee and which also included the current budget and forecast budgets. The consultation closed in July 2020, and received 64 responses, which is an increase from the 23 responses collected last year.
32. The LSB acknowledges the FO's successful attempt to raise awareness of the consultation by alerting all notaries by email to the publication of the documents. Further, we welcome the notable increase in response rate, albeit we also recognise this rate could continue improving.

Consultation responses and consideration of responses

33. The application states that respondents to the consultation were in general supportive (67%) of the increase in the PCF and largely welcomed (91%) the decrease to the contingency fund contribution to £0.
34. The application and FO consultation response set out the major themes that emerged from the consultation responses and how the FO has considered these comments.
35. These comments are categorised under the following themes:
 - The banding system: some notaries raised concerns on the fairness of the system with some noting that it lacks in structure and suggested more bands to be added in it. Primarily, the FO note that the system provides greater equality for the profession, especially considering the discrepancy existing in the notaries' turnover and that it provides the assurance for the FO to achieve more concrete financial planning for its activities. In addition, the FO considers it is rather early to proceed to any changes given the insufficient time it has passed since its introduction. Notwithstanding this, the FO acknowledges that the respondents' suggestions, such as a flat percentage rate of turnover as suggested by some respondents, could be kept under consideration.
 - The definition of turnover: some respondents expressed the view that the definition of turnover is not clear enough. The FO reassured the respondents that it has no intention of changing the definition of turnover as this was set out in its consultation in 2019.
 - Impact of Covid-19: As part of this year's practising fees consultation, notaries were asked to estimate the reduction in turnover caused by the Covid-19 pandemic. 76% of the respondents reported a reduction in their

turnover due to Covid-19. Many respondents though stated that the business has improved since the beginning of the lockdown. The FO welcomed this input and expressed confidence that business will continue improving for the notarial profession.

36. In the application the FO note that given the support the PCF proposals received, it decided not to proceed to amendments. Nevertheless, in response to the query of some respondents for a clear definition of turnover, it aims to provide more guidance on how turnover is defined. The LSB welcomes the addition of themes of the consultation responses as it provided a clear picture of how notaries received the proposals.
37. For future applications and in absence of these exceptional circumstances that the pandemic has created, we would expect the FO to provide more information on how it has given consideration to the various issues that respondents raise.
38. In line with last year when the new methodological approach was introduced, the LSB expects the FO to produce a review of its bandings within 3 years of them coming into operation. This will ensure the FO keeps track of any impact from the new methodological approach and makes appropriate adjustments once it has had time to see the bandings in operation. The FO states that it is still early to proceed with changes as the approach has not been sufficiently tested yet. We will continue following up, through our regulatory performance function, to ensure that progress is being made in this regard.

Permitted purposes

Allocation to permitted purposes

39. The application explains that all PCF income is used to undertake permitted purposes covered within the scope of section 51(4)(a) of the Act.
40. The application further explains that the FO undertakes a range of permitted purpose activities. They are all activities that have been identified as predominately falling under section 51 of the Act.
41. In the application, the FO note that they consist of a small team and there are no departments whereby there can be a detailed allocation of costs between the activities falling under section 51 of the Act. As such, the FO provided estimates on the total allocation of PCF to permitted purposes. In terms of the LSB/OLC levy under s.51(4)(b), in 2020 the levy amounted to 6.2% of the PCF Income. The total amount of PCF 93.8% would fall between s.51(4)(a) and (f) with the vast majority falling under (a) (85.8%).
42. The LSB welcomes the submission of these estimates on the allocation of PCF to each of the relevant permitted purposes and expects the FO will continue providing this estimated allocation of the PCF income in future applications.

Other income allocated to permitted purposes

43. PCF budgeted income for the financial year end 31 March 2021 accounts for almost 90% of the total budgeted income. The remaining balance is expected to come from appointments, exam fees, notarial qualification information packs and certificates of exemption.

LSB targeted review of PCF

44. In our 2019/20 Business Plan⁵ we set out an intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.
45. Having engaged closely with approved regulators and their regulatory bodies, including the FO, the LSB published a consultation on the new draft practising rules and guidance on 30 July 2020. We look forward to receiving the FO's response to the consultation.

Transparency of PCF information to fee paying members

Clarity of information provided

46. The FO intend to publish the bands and PCF levels as an independent table. This will also be included in the request for certificate renewal and practice fee payment.

Regulatory and Equality Impact assessment

47. The application states that the FO does not consider it proportionate or necessary to produce a full regulatory and/or equality impact assessment. The LSB acknowledges that there is no formal requirement to carry out a regulatory and/or equality impact assessment and welcomes the FO's decision to consult on the impact of Covid-19 on the notarial profession. The application sets out that 76% of the notaries report a downturn in their business activity, with their turnover's reduction estimated to range between 10% to 70%.
48. The FO notes that the new methodological approach for the PCF determination aims to match the level of fees with the affordability to notaries. The bandings were determined to reflect a fairer distribution of costs among the profession. As the application notes, last year 45% of the notaries benefitted from a reduction in their annual payment of their certificate fee. The application also explains that 6% of those notaries with a turnover higher than £150,000 contribute for approximately 20% of the total PCF income and those in the lowest bracket (up to £15,000) contribute around 33% of the total income. In terms of impact associated with the Covid-19 pandemic, it is noted that some notaries may become forced to move to a lower band. This in turn may have an adverse effect on the PCF income.
49. As we noted last year, the LSB expects the FO to produce a review of its bandings within 3 years of them coming into operation. This will ensure the FO keeps track of

any impact from the bandings and makes appropriate adjustments once it has had time to see the bandings in operation.

50. It should also be noted that the LSB is currently consulting on draft PCF rules and guidance and these new rules provide a greater focus on the importance of equality and regulatory impact assessments in future PCF applications.

Decision

51. The LSB has approved the PCF application submitted by the FO for 2020/21 under section 51 of the Act.

Summary of expectations for next application

52. This decision notice sets out the following specific expectations for the application next year:

- FO to provide a detailed expenditure breakdown. (para 14)
- We also continue expecting the FO to develop a documented reserves policy and for future PCF applications to include this alongside information on the progress the FO has made in relation to achieving this goal. (para 29)
- FO to consider a more detailed explanation of how consultation responses were considered and whether the feedback resulted in changes and if not, the reasons for their decision. (para 37)
- FO to provide information on how the new methodological approach to the PCF is progressing through a review of its bandings. This will ensure the FO keeps track of any impact from the bandings and makes appropriate adjustments once it has had time to see the bandings in operation. We will continue following up, through our regulatory performance function, to ensure that progress is being made to develop appropriate mechanisms for assessing the impact. (para 38)

53. Alongside these concerns about the longer term plans of the FO to reduce the deficit and build up reserves to achieve full regulatory independence, this decision notice has set out the LSB's concerns about the FO's performance in relation to outcome WL2 of our regulatory performance framework. This will be considered further through our review of the FO's wider performance under the Well-Led standard. In its application next year, the FO will need to demonstrate that it has taken into account any findings or actions in relation to this area which result from the review.

Matthew Hill, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

18 September 2020