

Practising Fee Rules 2009

Version 1: 15 December 2009

The Legal Services Board has, on 9 December 2009, made the following rules under Legal Services Act 2007 (c.29), section 51(3) and (6):

A. DEFINITIONS

1. The words defined in these rules have the following meanings:

Act	the Legal Services Act 2007 (c.29)
Applicable persons	includes “relevant authorised persons” as defined in Section 51(8) of the Act but extends also to other persons over which the Approved Regulator has regulatory powers
Approved Regulator	has the meaning given in Section 20(2) of the Act
Board	the Legal Services Board
Consumer Panel	the panel of persons established and maintained by the Board in accordance with Section 8 of the Act
legal services	means services provided by a person which consist of or include “legal activities” as defined by Section 12(3) and 12(4) of the Act

permitted purposes	the purposes which an Approved Regulator may apply amounts raised by practising fees, as set out in Rule 6 of these Rules
person	includes a body of persons (corporate or unincorporated)
practising fees	has the meaning given by Section 51(1) of the Act
regulatory functions	has the meaning given by Section 27(1) of the Act
reserved legal services	has the meaning given in Section 207(1) of the Act.

B. WHO DO THESE RULES APPLY TO?

2. These Rules are the rules that the Board has made in compliance with 51(3) and 51(6) of the Act relating to the control of practising fees charged by Approved Regulators.
3. Accordingly, these Rules apply to each Approved Regulator that proposes to charge practising fees as part of its regulatory arrangements.
4. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

C. THE PERMITTED PURPOSES

5. Monies raised through practising fees must not be applied for any purpose other than one or more of the permitted purposes.

6. The permitted purposes are:

- (a) the regulation, accreditation, education and training of applicable persons and those either holding themselves out as or wishing to become such persons, including:
 - (i) the maintaining and raising of their professional standards; and
 - (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
- (b) the payment of a levy imposed on the Approved Regulator under section 173 of the Act and/or the payment of a financial penalty imposed on the Approved Regulator under section 37 of the Act;
- (c) the participation by the Approved Regulator in law reform and the legislative process;
- (d) the provision by applicable persons, and those either holding themselves out as or wishing to become such persons, of legal services including reserved legal services, immigration advice or immigration services to the public free of charge;
- (e) the promotion of the protection by law of human rights and fundamental freedoms;
- (f) the promotion of relations between the Approved Regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions;
- (g) increasing public understanding of the citizen's legal rights and duties.

D. THE APPROVAL MECHANISM

7. Where an Approved Regulator proposes to charge practising fees as a part of its regulatory arrangements, the Approved Regulator must apply to the Board for approval of the level of that practising fee.
8. In making an application under Rule 7, an Approved Regulator must comply with the provisions of this Part of these Rules.
9. In respect of each Approved Regulator, the Board will set out from time to time:
 - (a) a timetable including key decisions and submission dates that must be observed by the Approved Regulator and the Board respectively;
 - (b) the persons that should be consulted by the Approved Regulator before submitting its application;
 - (c) the criteria against which the Board will decide on applications put to it; and
 - (d) the evidence required by the Board to satisfy it against the agreed criteria.
10. Insofar as the criteria mentioned in Rule 9 (c) are concerned, the Board and Approved Regulator should have regard to factors including the following:
 - (a) evidence which demonstrates that reasonable care was taken in settling the application in the context of the budget necessary for the immediate and medium term;
 - (b) evidence which demonstrates that the revenue raised through the practising fee charge will be applied solely to purposes which are permitted purposes;
 - (c) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions;

- (d) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions; and
- (e) evidence that persons paying practising fees will have explained to them how revenue raised through the charging of practising fees will be applied as between the Approved Regulator's performance of regulatory functions and any other functions also carried on by the Approved Regulator.

11. Insofar as the evidence mentioned in Rule 9 (d) is concerned, the Board and Approved Regulator should have regard to factors including the following:

- (a) a description of how the application was developed and settled, including any consultation carried out, whether or not such consultation was required by the Board;
- (b) a budget showing anticipated income from practising fees, all other expected income to be applied to permitted purposes and planned expenditure of income against the permitted purposes;
- (c) an explanation of how the cost to each regulated person is to be broken down as between income to be allocated to the discharge of regulatory functions and income allocated to any other functions;
- (d) an explanation of contingency arrangements where unexpected regulatory needs arises in-year;
- (e) evidence of how the previous year's practising fee income was allocated only to permitted purposes; and
- (f) a regulatory and diversity impact assessment.

12. In considering an application submitted to it under this Part of these Rules, the Board reserves the right to consult any person it considers appropriate. In particular, it reserves the right to consult the Consumer Panel about the impact of the proposed fee on persons providing non-commercial legal services.

13. If the Board approves an application under this Part of these Rules, it must notify the Approved Regulator concerned.

14. If the Board does not approve an application under this Part of these Rules, it must:

(a) notify the Approved Regulator concerned;

(b) give reasons for its decisions;

(c) require the Approved Regulator to submit a revised application which addresses the Board's reasons for withholding approval previously; and

(d) specify the circumstances (if any) in which the Approved Regulator may charge a limited practising fee under its regulatory arrangements as an interim measure pending consideration and approval of its full application.