

Guidance to Approved Regulators on Practising Certificate Fee (PCF) applications

1. This document provides guidance and information to help approved regulators prepare their applications to the LSB for the approval of PCF levels. It explains what the LSB will look at and the evidence that must be provided by approved regulators in each PCF application. This is so that the LSB may make an informed decision, based against the criteria in the Practising Fee Rules 2016 (“the Rules”) and the evidence provided by the approved regulator.

The LSB’s role

2. The LSB has an oversight role and therefore the responsibility for setting the fees at the correct and appropriate level remains with the approved regulator. The LSB’s role is however an active one, in that it must assess an application against the criteria for deciding applications that are set out in the Rules.
3. The LSB has a defined process for assessing PCF applications, and while section 51 of the Legal Service Act 2007 (the “Act”) provides the basis upon which the LSB may make rules specifying the permitted purposes and requires the Board to approve the level of the fee, there are also wider considerations beyond the requirements of section 51. A PCF approval is an exercise of the LSB’s functions and in delivering that function we must act in a way that is compatible with the overall regulatory objectives. In doing so, the LSB will continue to have regard to all its statutory obligations in deciding whether to approve a PCF application, including having regard to the Better Regulation Principles and to best regulatory practice, as is also required of approved regulators.
4. The LSB Board will delegate authority to approve PCF applications to the Chief Executive, subject to consultation with nominated Board Members.

What we will look at to help our assessment and what we expect from approved regulators

Permitted purposes

5. Given the statutory requirement to only spend practising fee income on the permitted purposes, the application will need to include an analysis of spend against the permitted purposes. There are approved regulators that have purely regulatory functions, and others that deliver the permitted purposes through both the regulatory and representative arms; therefore our analysis of applications will be appropriate to each approved regulator’s functions. We will seek clarity that PCF income is attributed solely to the permitted purposes; this includes regulatory and representative arms’ shared services where that applies. Approved regulators, when presenting their applications should set out:
 - Total PCF income and expenditure allocated to regulatory functions (that is, the regulatory arm budget)

- Total PCF income and expenditure allocated to non-regulatory functions (that is, income from the Representative budget allocated to permitted purposes)
 - Total PCF income and expenditure on central/shared services (where relevant)
6. Information on central/shared services¹ should be provided with the level of detail and clarity so that the LSB can see clearly the division of income to those shared services. For example, it should clearly show total PCF expenditure against each budget item of the shared services (of the regulator and representative arm). It should also include how PCF income is allocated to the shared services in the budget year, and, for comparison, how it is allocated against the current year forecast.

Derivative income

7. Given that the regulated community have no choice but to pay the fee, we consider it important that they know how income and resources will be allocated, and whether they are from permitted or non-permitted activities and sources. This applies to any funds where there is an intention to use commercial income arising from PCF funded permitted purposes (so called “derivative income”) for non-permitted activities. It requires the approved regulator to be clear and transparent about its allocation of financial resources in order to ensure accountability in the public interest.
8. We would draw attention to rule 10f) in the Rules which requires approved regulators, for the purposes of enabling the LSB to assess the impact on the proposed fee, to provide clarity and transparency on the allocation of all the approved regulator’s financial resources. While there is no explicit prohibition on using funds in this way, we will want to assure ourselves that such activity does not compromise any of the regulatory objectives, the Better Regulation Principles or best regulatory practice. We expect that if approved regulators wish to use derivative income, they are absolutely transparent about how the funds are to be allocated. The LSB needs to understand what impact this would have on the actual fee the regulated community is expected to pay.

Budget and fee forecasts

9. Rule 11 of the Rules sets out the types of evidence that should be submitted in support of an application. In particular, rule 11b) requires that where there is a proposed increase in practising fees, the budget should show anticipated income from all sources and its allocation to the permitted purposes for the current application and, where available, the next three years. Where the information is not available, it would help our assessment if the approved regulator could explain why. The approved regulator will also need to show fee estimates for the next three years, where the fee level is increasing in the current year (though we appreciate that these may not be precise estimates and may be subject to caveats).

¹ For the avoidance of doubt paragraph 6 is relevant to those approved regulators with a regulatory and representative function

10. While this additional information is only required where the proposal is to increase fees, approved regulators are free to provide any information that supports the application.

Transparency for fee payers

11. We require approved regulators to proactively make available the information set out in the application to their members charged with paying a practising fee. We therefore encourage approved regulators to share information with their fee-paying members, to ensure there is transparency and clarity of understanding about how the level of fees have been set, how the collected money is being used and that a rational process was followed in setting the fees. In summary, there should be transparency for fee paying members on how the fee level has been set, including spend derived from permitted and non-permitted activities.

Reserves

12. We ask that approved regulators provide sufficient assurance that reserve levels are set at an adequate level for the upcoming budget, and that the impact of high level reserves have been considered when setting the fee levels. We also ask that approved regulators state what their reserves policy is and where appropriate make it clear if it has changed.

Consultation

13. We encourage approved regulators to conduct regular and periodic (but not necessarily annual) consultation with their regulated community to ensure they keep in touch with stakeholders views on the approach to setting the fee and fee levels. There should not be a gap of more than three years between consultations and there should always be consultation if the proposal is to increase the fee, regardless of by how much, or if the basis for the calculation of the fee is changing. It is up to the approved regulator to decide the form and timing of a consultation and to explain how it has consulted and the reasons if it decided not to consult.

Levy

14. There must be accurate presentation and representation of the LSB and The Office for Legal Complaints (Legal Ombudsman) levies so that the regulated community is clear about what proportion of PCF that is attributable to the levies.

Independence

15. Approved regulators should note that the LSB will seek to monitor compliance around independence issues. We will want to be assured that where the practising certificate fee is allocated to activities of both representative and regulatory arms of the approved regulator the regulatory arm has control over its own budget process. This is just one of the mechanisms by which the LSB monitors independence.

LSB decision letter for previous year

16. Each application must address any specific points of improvement highlighted in the letter approving fee levels in the previous year. Approved regulators must refer to the approval letter for the previous year to ensure they have addressed any issues raised.

Timetable for assessment of applications

17. The LSB will endeavour to complete its assessment of applications as quickly as possible and has set itself a target of doing so within three weeks of receipt, where possible. Nonetheless, more time may be needed in some cases, for example, if there has been a change in the approved regulator's rules governing the basis upon which the PCF is calculated, or if there is a significant change in approach to derivative income. We are content in the pre-application phase, to agree with individual approved regulators a timeframe for assessing applications. We need to balance this with the need to assess applications thoroughly and in accordance with the Act and the Rules.

Rule change process

18. We encourage approved regulators to engage with the LSB early in their fees setting process to discuss any issues arising before the application is submitted. This is in particular with regard to any changes in the fee levels or the fee structure, which may require a rule change application.

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The Approval Mechanism

Practising Fee Rule – criteria D.10 (a) - (g) Insofar as the criteria mentioned in Rule 9 (c) are concerned, the Board and approved regulator should have regard to factors including the following:	Practising Fee Rule – evidence D.11 (a) - (g) Insofar as the evidence mentioned in Rule 9 (d) are concerned, the Board and approved regulator should have regard to factors including the following:	Further detail on criteria and evidence – required
Section 1: Developing the application / Setting the Budget		
D.10 b) 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;	D.11 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; D.11 d) an explanation of contingency arrangements where unexpected regulatory needs arises in-year;	<p>Fee Levels The fee levels that require approval from the LSB for the Budget year including:</p> <ul style="list-style-type: none"> • a comparison with fee levels in the Current year, and • an explanation of why the fee level has changed (if appropriate). <p>Setting the budget A description of the process of setting the Budget including:</p> <ul style="list-style-type: none"> • consultation with regulatory & representative arms. <p>A description that the budget has been set in light of immediate and medium term needs ensuring:</p> <ul style="list-style-type: none"> • the budget has been developed alongside business/strategic plans. <p>Contingency/reserves A description of contingency/reserves arrangements including a level of assurance to the LSB that reserve levels are set at an adequate level for the upcoming budget and that the impact of high level reserves (if appropriate) have been considered when setting the fee levels;</p> <p>Budget figures Total PCF income collected in the Current year and Budget year and how it was allocated or spent:</p> <ul style="list-style-type: none"> • broken down by department / expenditure category.

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		<p>An explanation of any variance in total PCF income between the Current and Budget year.</p> <ol style="list-style-type: none"> a) An explanation of any variance in total PCF spending between the Current and Budget year. b) The proposed practising fee for the current application and, where there is a proposed increase in practising fees and where available, the estimates for the next three years c) If the fee is going up, the budget should show anticipated income from all sources and its allocation to the permitted purposes for the current application and, where available, the next three years. <p>Consultation A description of the consultation process conducted with their members who pay a practising fee including:</p> <ul style="list-style-type: none"> • a brief summary of the main issues raised by respondents, and • any changes to the PCF proposals as a result of those issues raised. <p>All approved regulators should conduct regular and periodic consultation with their regulated community to ensure approved regulators keep in touch with stakeholders’ views on the fee levels and approach to setting the fee.</p>

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		<p>Approved regulators do not necessarily need to consult every year, but we expect approved regulators not to go more than three years without having consulted, even if the fee has been static or has fallen. Approved regulators should always consult if the proposal is for the fee level to rise, regardless of by how much.</p> <p>We would encourage approved regulators to consider:</p> <ul style="list-style-type: none"> • the length of time the consultation is published for those reading and responding to the proposals, and • to seek alternative ways of consulting with non-commercial bodies (see section 6) if appropriate.
Section 2: Permitted purposes		
D 10. b) evidence which demonstrates that the revenue raised through the practising fee charge will be applied solely to purposes which are permitted purposes;	D.11 e) evidence of how the previous year’s practising fee income was allocated only to permitted purposes; D.11 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;	Permitted purposes requirement A description of how the total PCF income has been allocated or spent solely on one or more of the permitted purposes. <ul style="list-style-type: none"> • Section C of the Practising Fee Rules 2016 lists the permitted purposes.² • Where appropriate the application should show the amount of PCF allocated to regulatory activities. Budget figures Additional figures are required on total income from other sources (non-PCF income) which will be allocated or

² The LSB’s Practising Fee Rules 2016 may be found on our website at: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/practising_fee_rules.pdf. The rules include a summary of the permitted purposes.

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		spent on one or more of the permitted purposes: <ul style="list-style-type: none"> • broken down by department / expenditure category. • This must include figures for the Current year and the Budget year.
Section 3: Regulatory functions		
D.10 c) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions; D.10 d) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions; and	D.11 d) 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;	Regulatory & non-regulatory activities A description that the regulatory arm has been given sufficient resource to carry out their regulatory functions in compliance with Section 30 of the Act and the supporting Internal Governance Rules in providing independent regulatory arms. ³ Budget figures Where relevant approved regulators must provide figures on how they allocate their activities to permitted purposes which are regulatory functions, non-regulatory functions and shared/central services. Total PCF income allocated or spent on permitted purposes that are regulatory functions : <ul style="list-style-type: none"> • broken down by department / expenditure category. • This must include figures for the Current year and the Budget year. Where relevant total PCF income allocated or spent on permitted purposes that are non-regulatory functions (i.e. all PCF income allocated to permitted purposes which do not fall under the category of regulation): <ul style="list-style-type: none"> • broken down by department / expenditure category.

³ This may also be evidenced and self-certified through the Internal Governance Rules compliance process.

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		<ul style="list-style-type: none"> • This must include figures for the Current year and the Budget year. <p>Total PCF income allocated or spent on central/shared services between the representative and regulatory arm of the AR (if appropriate):</p> <ul style="list-style-type: none"> • broken down by department / expenditure category. • This must include figures for the Current year and the Budget year.
Section 4: Clarity and transparency		
<p>D.10 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.</p> <p>D.10 f) for the purposes of enabling the LSB to assess the impact on the proposed practising fee, provide clarity and transparency on the allocation of all the approved regulator’s financial resources, whether or not those arise from permitted purposes.</p>		<p>Transparency of PCF information to fee-paying members</p> <p>A description /or copy of the information that will be provided to fee paying members detailing:</p> <ul style="list-style-type: none"> • the level of the fee, • how the level of the fee has been set, • how the PCF money collected is being spent on the permitted purposes including a breakdown of PCF income spent on regulation functions, non-regulation functions and central/shared services. • the information should be clearly presented clearly in a format that may be easily understood by a wide range of audiences. • in the case of proposals to use commercial income arising from PCF funded permitted purposes for non-permitted activities, this should be transparent and clearly explained. <p>We suggest using the analogy of the Council Tax leaflet which is distributed alongside the council tax bill each year.</p> <ul style="list-style-type: none"> • This information could be web-based with a link sent to fee paying

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		members (no requirement for a paper based exercise).
Section 5: Regulatory and diversity impact assessment		
	D.11 g) a regulatory and diversity impact assessment.	Impact assessments A description of how the proposals may potentially impact on various groups within your membership. <ul style="list-style-type: none"> • This includes the impact of the increase in fees (if appropriate) A description of how the proposals have been developed in light of the Regulatory Objectives (set out in the Act) and Better Regulatory Principles. An optional requirement to provide a Regulatory and/or Equality Impact Assessment.

Approval Mechanism: additional criteria around consultation

Practising Fee Rule	Detailed criteria
Section 6: Consultation with non-commercial bodies and the Consumer Panel	
<p>Section 51 (7) (a) of the Act provides that our rules must contain “provision requiring the Board, before it determines an application for approval of the level of a fee, to consult such persons as it considers appropriate about the impact of the proposed fee on persons providing non-commercial legal services”.</p> <p>Rule D (12) provides that we may consult any person we consider appropriate and in particular the Consumer Panel.</p>	<p>Consultation with non-commercial bodies</p> <p>A description of the steps taken to ensure that the impact of persons providing non-commercial legal services have been considered when setting the fees.</p> <ul style="list-style-type: none"> • This will require the inclusion of appropriate bodies such as Law Centres Federation, Citizens Advice and Advice Service Alliance in the consultation process. <p>Consultation with non-commercial bodies should be included in the application as a general rule or give an explanation as to why their views have not been sought which might refer to the relevance of charities providing legal services to the ARs specific branch of the legal profession.</p> <p>The LSB reserves the right to consult any person we consider appropriate, including the Legal Services Consumer Panel about the impact of the proposed fee on persons providing non-commercial services.</p>