

INTERNAL GOVERNANCE AND PRACTISING FEE RULES

RESPONSE ON BEHALF OF THE MASTER OF THE FACULTIES,

AN APPROVED REGULATOR

Internal Governance Rules

1. We are invited to comment on the draft Internal Governance Rules made under section 30 of the Legal Services Act 2007. The consultation paper explains that the section 30 Rules must cover all approved regulators, whether or not they exercise any representative functions. A distinction is made between approved regulators without representative functions and Applicable Approved Regulators which do. The Master of the Faculties, who regulates the notarial profession, has no representative functions and is not an Applicable Approved Regulator. We are confident that the Master of the Faculties satisfies the requirements in Rules 6 and 7 to have arrangements in place that observe and respect the principle of regulatory independence and which provides it with the capacity to act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle.
2. We do not have any comments on those Rules which regulate Applicable Approved Regulators.

Practising Fee Rules

3. We are invited to comment on the draft Practising Certificate Rules made under section 51 of the Legal Services Act 2007.
4. We consider that the permitted purposes for which monies from practicing fees may be applied are reasonably comprehensive. However, for the avoidance of doubt we believe that the list of purposes should be supplemented to take account of activities which are essential for an approved regulator to carry out the regulatory objectives. It is important both to an approved regulator in dealing with authorised persons, and in the general interest of transparency, that the range of matters which can be covered by the practicing fee are specified in the Rules.
5. Although “regulation” in 6(a) could be said to include the regulation of the conduct and discipline of authorised persons, we consider that this should be specifically included in a separate Rule, as the main concern of 6 appears to be with educational provision. The new permitted purpose would be “the regulation of conduct and discipline of authorised persons by monitoring, investigation and disciplinary proceedings”.
6. Although the payment of the Levy is included at 6(b), it is not clear that a penalty made under section 37 of the Act would be included. The LSB consultation paper *Compliance and Enforcement* envisages that a penalty could be paid by the practicing fee. There is also the possibility of the approved regulator’s general legal liability. The Master of the Faculties has no other source of income to pay penalties, damages and insurance premiums. We suggest that (b) be altered to say “the payment of a levy imposed on the

approved regulator under section 173 or a penalty under section 37 or any legal liability incurred in the course of regulating reserved legal services”.

7. In our response to the earlier consultation paper on section 51 of the Act we said:-

Another matter which needs to be covered by the rules is the question of the cost of administration incurred by the approved regulator. It could be said that it must be implied that all reasonable costs of administration incurred in carrying one or more of the permitted purposes is permissible in itself. However, in the interests of clarity there should be a rule stating that the amount raised by practising fees approved by the Board may be applied in respect of the cost of administration in carrying out one or more of the permitted purposes.

8. We therefore suggest a new Rule 7 which says “For the avoidance of doubt, practicing fees may be applied to the cost of administration in fulfilling one or more of the permitted purposes.”
9. We agree that the approval mechanism should be made between the LSB and each approved regulator. We agree with the factors to which the LSB and approved regulator should have regard when making such an agreement.
10. We propose a meeting with representatives of the LSB to frame a memorandum of understanding between the LSB and the Master of the Faculties.