

## Annex B: Draft Guidance on the proposed Practising Fee Rules

### Introduction

1. The Legal Services Board (“LSB”) is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Legal Services Act 2007 (“the Act”) to hold regulators for the different branches of the legal services profession to account.
2. The Act provides that in discharging its functions, the LSB must comply with and thus promote eight regulatory objectives. The LSB’s functions include oversight of the practising fee levied by each approved regulator on persons authorised to provide legal services. The Act requires the LSB to approve or refuse applications from approved regulators for the practising fee that they intend to charge to those that they regulate.
3. A practising fee is payable to approved regulators only if the LSB has approved the level of that fee. Under section 51 of the Act the practising fee may only be used for a permitted purpose(s).
4. Section 51(3) and (6) of the Act obliges the LSB to make rules specifying the permitted purposes, with provisions on the criteria, material, process, and procedure for applications. Accordingly, the Practising Fee Rules 2020 (“Rules”) have been made by the LSB under these provisions of the Act.
5. This Guidance on practising fee application and approval is given by the LSB under section 162 of the Act. Approved regulators must have regard to this Guidance in preparation of their practising fee applications, as required under Rule 4 of the Rules.

### Purpose

6. The Rules are intended to provide a clear practising fee application and approval framework for approved regulators and their regulatory bodies, including on the criteria that applications must satisfy.
7. A key aim of the Rules is to increase transparency about the approved regulators’ and regulatory bodies’ programmes of activity, which are funded in whole or in part by the practising fee, enabling those who pay the practising fee to drive accountability for its expenditure. This should lead to a meaningful debate on the purpose, benefits, costs and value of regulation, which ought to result in ongoing improvement in standards across the sector.
8. The framework should allow regulatory bodies to demonstrate that they have sufficient funds and financial resilience to regulate and operate efficiently and cost effectively.
9. The Rules and approval framework will inform the LSB’s wider oversight responsibilities, including its regulatory performance assessment framework.

## Structure of Guidance

10. This Guidance is divided into ten sections (B to K), mirroring each section of the Rules (section A of the Rules is the definitions provision and is therefore excluded). Each section sets out its purpose, an overview of the key points made in the guidance, and guidance on each of the Rules. These sections are:
  - B: Application and Guidance
  - C: Legal Framework
  - D: Procedure
  - E: Overarching criteria
  - F: Allocation of practising fee to permitted purposes
  - G: Financial information
  - H: Reserves
  - I: Consultation and engagement
  - J: Impact assessments
  - K: Decisions by the Board

## Section B: Application and Guidance (Rules 2 to 4)

### Purpose

11. This section sets out the LSB's duty under Section 51 of the Act to make rules for approved regulators on practising fee application and approval.
12. Each approved regulator *must* comply with the Rules when applying to the LSB to approve their practising fee.
13. In seeking to comply with the Rules, each approved regulator must have regard to this Guidance.

## Section C: Legal Framework (Rules 5 to 8)

### Purpose

14. This section sets out the legal framework prescribed by the Act for each approved regulator's application to the LSB for approval of the practising fee and the permitted purposes to which the practising fee may be applied.

### Key Points

15. The setting of the practising fee and the application by an approved regulator for approval of that fee are regulatory functions. Regulatory functions must be discharged in accordance with section 28 of the Act, which makes clear that an approved regulator must act in a way which is compatible with the regulatory objectives and which they consider most appropriate for meeting those objectives, so

far as reasonably practicable. Section 28 of the Act also requires the approved regulator to have regard to the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. These principles are addressed in Rule 13 and 'Section D: Overarching Criteria' of this Guidance.

16. The approved regulator should have essentially, two guiding principles in setting the practising fee; the permitted purposes and the regulatory objectives. The approved regulator *may only* apply the practising fee for the permitted purpose(s), and must so far as reasonably practicable act compatibly with, and in a way it considers most appropriate for meeting the regulatory objectives.

## **Guidance on Specific Rules**

### Rule 5

17. This Rule repeats section 51(5) of the Act. As the practising fee is a regulatory arrangement, any functions 'under or in relation to' the fee or 'in connection with the making or alteration' of the fee are regulatory functions, in accordance with section 27(1) of the Act.

### Rules 6 to 7

18. Rule 6 follows on from Rule 5. As the setting of the practising fee is a regulatory function, the approved regulator's obligations under section 28 of the Act apply.
19. Rule 7 repeats section 51(2) of the Act; the amounts raised by the practising fee may only be applied for the permitted purposes, which are set out at Rule 8.
20. The approved regulator therefore should have two aims when it comes to setting the level of the practising fee:
  - Firstly, the fee *may only* be applied for the permitted purposes. Therefore, the activities which the practising fee will fund, in whole or in part, must fall with the permitted purposes.
  - Secondly, the fee must be set and applied for in accordance with section 28 of the Act. It must be compatible with the regulatory objectives and applied for in a way that the approved regulator considers most appropriate for meeting those objectives (so far as is reasonably practicable).
21. The regulatory objectives are set out at section 1(1) of the Act:
  - a) Protecting and promoting the public interest;
  - b) Supporting the constitutional principle of the rule of law;
  - c) Improving access to justice;
  - d) Protecting and promoting the interests of consumers;
  - e) Promoting competition in the provision of services within subsection (2);

- f) Encouraging an independent, strong, diverse and effective legal profession;
  - g) Increasing public understanding of the citizen's legal rights and duties;
  - h) Promoting and maintaining adherence to the professional principles.
22. In complying with their obligations, the LSB would expect each approved regulator to make clear which activities are to be funded by the practising fee and which permitted purpose(s) each activity is for. This is further supported by 'Section F: Allocation of Practising Fee to Permitted Purposes' (Rules 14 to 16).
23. The LSB would then expect each approved regulator to establish that the activities are consistent with the regulatory objectives and determine the most appropriate way of meeting those objectives (as far as reasonably practicable). This may be achieved by addressing which regulatory objectives are met by each activity, or group of activities, to be funded or it may be achieved by considering the programme of activity as a whole, and how this supports each of the regulatory objectives.

#### Rule 8

24. Rule 8 sets out the permitted purposes for which the practising fee may be applied. The permitted purposes in Rule 8 repeat those contained in section 51(4) of the Act and the previous Practising Fee Rules 2016 (adopted following consultation in 2010), modified to provide clarity on the permitted purposes below.
25. Rule 8(b) also enables the approved regulator to apply part of the practising fee to the payment of a financial penalty under section 37 of the Act.
26. Rule 8(h) enables an approved regulator to apply part of the practising fee to prevent any person, who is not properly authorised, from holding themselves out as such a person.

### **Section D: Procedure (Rules 9 to 12)**

#### **Purpose**

27. The aim of Rules 9 to 12 and this section is to set out the procedure, manner and form which each approved regulator must follow when applying to the LSB to approve the level of their practising fee.

#### **Key points**

28. The LSB will determine the approved regulator's application within the time period it specifies in writing upon receipt of the application in the correct form (set out at Annex A).
29. We will aim to make a decision within 28 calendar days. The LSB will use all reasonable endeavours to provide a decision promptly within the period notified. There may be occasions where this will not be possible (for example where an application raises a number of questions requiring further consideration and/or further

information is to be provided by the approved regulator). The approved regulator will be notified in advance of any delay and the reasons.

30. Further time will be required to consider applications which the approved regulator has to re-submit in whole or in part. This is likely to arise where there has been a failure to comply with the Rules or to properly consider this Guidance.
31. Following section 51(7) of the Act, the LSB has the right to consult any person, including the Consumer Panel, about an application for approval of the practising fee and the impact that it may have on persons providing non-commercial legal services.

## Section E: Overarching Criteria (Rule 13)

### Purpose

32. This section sets out the LSB's overarching expectations of approved regulators in setting their practising fee and applying for approval. Detail as to how the approved regulator may meet these criteria is set out below.

### Key Points

33. The five criteria at paragraphs (a) to (e) of Rule 13 reflect the principles applicable to the discharge of an approved regulator's regulatory functions set out at section 28(3) of the Act. This follows from 'Section C: Legal Framework' (Rules 5 to 8), which makes clear that the practising fee is part of an approved regulator's regulatory arrangements.
34. In determining the level of the practising fee, each approved regulator should consider the programme of activity to be funded, which permitted purpose(s) are met by the activities, how the programme will support the regulatory objectives and allocation of funding in accordance with the approved regulator's strategic objectives and priorities.

### Guidance on Specific Rules

#### Rule 13(a): Transparency

35. 'Programme of activity' is defined in Rule 1 as the activities which will be funded, in whole or in part, by the practising fee. In order to comply with Rule 13(a) on transparency the approved regulator must make clear *what* these activities are, *how* the funds will be applied to each activity and *why* this will benefit the regulated community and/or consumers, with reference to the permitted purposes and the regulatory objectives.
36. The LSB recognises that the approved regulator's programme of activity will include different types of activities; some of the funding will be used for core activities to comply with their regulatory and legal obligations, such as the setting and application for approval of the practising fee. The benefit of these types of activity will be readily accepted by the LSB. Further explanation will only be necessary if the fees allocated to these types of activity increase significantly.

37. Part of the practising fee will be applied to other activities of the approved regulator, beyond their core legal obligations under the Act. These might include standalone projects such as diversity initiatives, education projects and modernisation or innovation projects. The approved regulator will be expected to set out how it will measure the benefits of these activities. This should include how the approved regulator has assessed the anticipated benefits at the point that the programme of activity was determined and how it will assess the actual benefits after the activity has been completed.
38. This Rule is supported by 'Section F: Allocation of Practising Fee to Permitted Purposes', (Rules 15 and 16).

#### Rule 13(b): Accountability

39. Each approved regulator should proactively engage with relevant authorised persons about the level of the practising fee and the programme of activity to which it will be applied. This should include consideration of the application of the practising fee for the previous year and the anticipated versus actual benefits produced.
40. The approved regulator must make clear how they have sought to engage with relevant authorised persons, and how any responses have been taken into account.
41. If the LSB has raised concerns about the previous practising fee application, or as part of the regulatory performance assessments, the approved regulator will be expected to address these in the application.
42. This Rule is supported by 'Section I: Consultation and Engagement' (Rules 24 and 25).

#### Rule 13(c): Proportionality

43. The approved regulator should set out clearly:
  - the level of funding required to deliver their programme of activity
  - how that cost has been distributed amongst the regulated community, eg. between firm versus individual practising fees and across different income bands, with an explanation of the reasoning for this distribution
  - the amount which is allocated to each activity, and
  - how the allocated fees have been calculated to ensure the activity is carried out effectively and efficiently.
44. The approved regulator should explain how the allocation of funds will promote the regulatory objectives and ensure its ongoing financial resilience.
45. This Rule is supported by 'Section F: Allocation of Practising Fee to Permitted Purposes' (Rule 14) and 'Section H: Reserves' (Rule 22).

#### Rule 13(d): Consistency

46. Each approved regulator should set out its strategic objectives and priorities for the practising fee year. The practising fee should be allocated within the programme of activity consistently with those objectives and priorities.

### Rule 13(e): Targeted where action is needed

47. As set out in 'Section C: Legal Framework', the practising fee is a regulatory arrangement. The approved regulator must apply the fee in the way which it considers most appropriate to meet the regulatory objectives. The LSB would expect the approved regulator to explain how the programme of activity will support the regulatory objectives.

## **Section F: Allocation of Practising Fee to Permitted Purposes (Rules 14 to 16)**

### **Purpose**

48. The purpose of this section is to ensure that the practising fee is only used for permitted purposes, that the funding is properly justified and does not include any costs or activities which should not be charged to the regulated community through the practising fee. It is aimed at increasing transparency and accountability on the allocation of practising fee income to permitted purposes.

### **Key Points**

49. Each approved regulator should set out the amount of funding which will be allocated to the regulatory body and the amount which will be retained by the approved regulator. This should be expressed as actual figures and also as a percentage of the overall practising fee income. Where there are shared services, these should be allocated on the basis set out below.
50. Each approved regulator should justify all elements of the practising fee, by the activity to be funded and the permitted purpose which this activity is for.
51. The LSB recognises that some of the permitted purposes are less clearly defined than others (see further detail below). The approved regulator who intends to fund an activity from the practising fee for any of these purposes should explain in more detail how the activity will support this purpose.

### **Guidance on Specific Rules**

#### Rule 14

52. Rule 14 only applies to approved regulators with both representative and regulatory functions. It is consistent with the LSB's obligation under the Act – and set out in Internal Governance Rules 2019 - to ensure that the approved regulator's regulatory functions are not prejudiced by representative functions and are, as far as reasonably practicable, independent of those functions.
53. Each approved regulator should state the amount of the practising fee which will be allocated to the regulatory body and the amount to be retained by the approved regulator. These should be set out as actual figures and also as a percentage of the overall practising fee income.

54. This should be straightforward when applied to costs which are clearly delineated between the approved regulator and regulatory body, such as permanent staff costs. However, the LSB is aware that a number of approved regulators share some services with the regulatory body. When the approved regulator is addressing these costs, they should make clear that these are shared services and the basis of the apportionment of cost.
55. Shared services costs might include:
- Expenses – such as travel, subsistence, accommodation and conferences. These should be directly allocated wherever possible or, where this is not possible, a reasonable apportionment may be applied on a case by case basis.
  - Premises costs – office space should be allocated on a square footage basis (a reasonable estimate may have to be made) and rent, service charges, utilities, cleaning and waste disposal should apply the same basis of allocation.
  - IT equipment and training – these should normally be based on headcount as expenditure per employee and should not usually vary according to hours worked.
  - Capital expenditure – this is the money an organisation or corporate body spends to buy, maintain, or improve its fixed assets, such as buildings, equipment, or land. It is considered a capital expenditure when the asset is newly purchased or when money is used towards extending the useful life of an existing asset, such as repairing the roof. Each year the reduction in value of the fixed asset must be calculated. This expenditure should be apportioned in the manner considered most appropriate by the approved regulator, with an explanation for the basis of apportionment.
  - Miscellaneous costs – may be apportioned according to an aggregate percentage for other shared costs, unless there is another reasonable basis for calculating these.
56. In preparing these figures, each approved regulator should note the requirements of in particular Rule 20 – the guidance of which is in ‘Section H: Reserves’ - which requires that regulatory bodies should control practising fee reserves as far as reasonably practicable.

### Rule 15

57. Rule 15 requires each approved regulator to set out the programme of activity for the practising fee year. This should be done in the table set out in the pro-forma application at Annex A of this Guidance. In forming the programme of activity, each approved regulator must identify which permitted purpose or purposes that activity is for and this should be stated next to each activity. The LSB would expect the approved regulator to state the figure allocated to the activity, also expressed as a percentage of the overall practising fee income. If the activity is to be funded by any other source of income, this should also be stated.



58. The LSB recognises that some of the permitted purposes are less well defined or prescriptive than others, and that these are more likely to go towards representative functions. These would include the permitted purposes set out at Rule 8(e) – (g), namely:
- e. The promotion and 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 or the citizen’s legal rights and duties.*
59. There is significant overlap between these purposes, for example - all of these purposes may include law reform, regulatory and ethical issues and communication functions. The approved regulator who intends to fund an activity from the practising fee for any of these purposes should explain in more detail how the activity will support this purpose.
60. The LSB does not expect the practising fee to be attributed to all permitted purposes equally, but the approved regulator should explain, in accordance with ‘Section E: Overarching Criteria’ (Rule 13), the set of objectives and priorities which have led to the allocation of funding.

#### Rule 16

61. Section 51(2) of the Act makes clear that the practising fee may *only* be applied for the permitted purposes. As noted above, the LSB recognises that some of the permitted purposes are less capable of clear definition than others. These are expressed as overarching aims, rather than distinct activities such as the permitted purposes set out at Rule 8(a) to(d) and (h).
62. The approved regulator must satisfy the LSB that all funding from the practising fee is within the limits of section 51. Where their programme of activity includes activities which serve multiple purposes, this must be stated expressly. For example, if the approved regulator intends to carry out an international development project, this may in part be for the permitted purpose at Rule 8(f) but it may also be intended to create opportunities for business development, which is not a permitted purpose. The approved regulator should, so far as is reasonably practicable, limit the funding of this activity from the practising fee to the permitted purpose. Where it is not possible to delineate the funding in this way, the approved regulator must explain how the funding nonetheless falls within the scope of section 51(2) of the Act.
63. If an approved regulator intends to apply part of the practising fee to representative functions, with multiple purposes, a detailed explanation of the efforts to delineate this funding and the justification will be required.

## **Section G: Financial Information (Rules 17 and 18)**

### **Purpose**

64. Rules 17 and 18 sets out the financial information which the LSB expects each approved regulator to include in its application for approval. Approved regulators will already have prepared much of the material required under these rules, including analyses of costs, budgets and statements on reserves, for other purposes, whether statutory accounts or management reports to their board. Even the smaller approved regulators which are too small to be required to produce a statutory audit, produce budgets, forecasts and statements of activity that broadly reflect the requirements of the practising fee application.
65. The aim is provide transparency to the regulated community, clarity to approved regulators and to ensure consistency in the form of information in practising fee applications. This will enable the LSB to be confident that the approved regulator has carefully and properly planned its financial position going forward.

### **Key Points**

66. Each approved regulator should provide their income and expenditure forecasts (including practising fee income) for three years and financial information for the previous year in actual figures.
67. The figures should be calculated on the accruals basis, net of VAT (unless irrecoverable) and a recognised indexation rate, in particular the Consumer Price Index, should be applied.
68. Each approved regulator should address any significant (i.e. over 2%) variances between actual and budgeted income and expenditure over the previous year, by explaining why this occurred and how it has influenced the figures provided in the forecasts.
69. Each approved regulator should state the amounts they have raised, and expect to raise, from the practising fee including the number of persons who have paid or are expected to pay. If the approved regulator proposes to alter the fee, or its distribution, they should set out how this will affect the forecast of income and expenditure.

### **Guidance on Specific Rules**

#### **Rule 17**

70. The LSB requires each approved regulator to provide financial information for the previous year including a comparison of actual and budgeted income and expenditure.
71. Each approved regulator should expressly state the level of income generated from the practising fee, the number of persons who paid this fee and any variance between that actual income and projected income. They should explain, in summary, any significant variances (more than 2%) between the forecast budget and the actual figures, including any activities budgeted for which have not been completed.

72. Variances should be expressed both in actual figures and as a percentage of the budgeted expenditure.
73. The LSB further requires each approved regulator to provide the forecast budget for three years from and including the year for which the practising fee is to be levied.
74. The LSB considers that the provision of forecasts for both income and expenditure for a three year period will ensure proper long term planning and provide a better opportunity for an approved regulator to engage with the regulated community (and others) on the costs, benefits and value of regulation. It will also allow the LSB to make an informed evaluation of the approved regulator's financial position. The LSB recognises that forecasts for years 2 and 3 will be indicative and will be re-evaluated in advance of future applications.

#### *Employment costs*

75. Employment costs form a significant component of the approved regulator's budget, particularly in relation to the smaller approved regulators and therefore should be addressed in the practising fee application.
76. If the application is submitted before the current financial year is complete, the financial information should include forecast figures for the remainder of the year.

#### *Practising fee income*

77. In addressing income and expenditure forecasts for three years including the year which the practising fee is to be levied, the approved regulator should state the forecast for the total amount of practising fee income they expect to receive, the numbers of practitioners they forecast will be paying this fee and at what level.
78. If the approved regulator proposes to alter the level of the fee or change the distribution of the fee in comparison to the current year, they should set out how this will affect the forecast of practising fee income both as a percentage and an actual figure. Where this is likely to lead to a significant increase or decrease in practising fee income, the approved regulator should explain how this change has been taken into account in its expenditure forecast.

#### *Other sources of income*

79. If the approved regulator expects to receive other sources of income, they should state where these are derived from and the level of risk connected with these. For example, income received from investments, or the use of any commercial income arising from practising fee funded permitted purposes.
80. If the approved regulator relies on income from voluntary payments (e.g. for representative functions), they should set out how they have come to estimate the amount of income and the risk that there may be to this funding.

#### *LSB and OLC Levy*

81. Approved regulators should provide an accurate presentation and representation of the LSB and Office for Legal Complaints (OLC) levies so the regulated community is clear about the proportion of PCF attributable to these levies.

## Rule 18

82. The LSB expects each approved regulator to follow recognised accounting principles in the preparation of their financial information.
83. Figures provided for previous and forecast expenditure, should be on the basis of accruals, rather than cash. This means that the expenditure should be recorded when the cost is incurred, i.e. when the goods are delivered or services provided, rather than when it is actually paid (the cash basis). This obligation is qualified in that approved regulators must provide the figures on the basis of accruals if it is “reasonably practicable to do so”. The LSB expects that most expenditure will be recorded on this basis and the approved regulator should provide a clear explanation for any figures which are on the cash basis.
84. The LSB expects the figures provided not to include VAT unless the VAT on a particular cost will not be recoverable. If this is the case, the approved regulator should make this clear and explain why they will not be able to recover the VAT.
85. The approved regulator should apply a recognised indexation (inflation) rate to all figures. In most applications the LSB would expect the indexation rate to be the Consumer Price Index (CPI). If an approved regulator applies a different rate, they should explain why they have done so.

## **Section H: Reserves (Rules 19 to 23)**

### **Purpose**

86. The purpose of this section is to ensure that approved regulators are prudent in setting the target levels of the different types of reserves which they hold. They should aim to appropriately and proportionately insure themselves against reasonable risks without unnecessarily inflating the costs to the regulated community, which could ultimately be passed on to consumers. They should be informed by their previous target levels of reserves against the accumulated reserves to date. The regulatory body (if separate) ought to have control over the practising fee reserve unless there is a specific reason why part of this needs to be retained by the approved regulator.

### **Key Points**

87. The practising fee reserve must be held separately from any other reserves of the approved regulator. The regulatory body should have control of this fund as far as reasonably practicable within the approved regulator’s corporate structure.
88. The approved regulator should set out clearly the different types of reserves which they hold and distinguish between committed reserves and uncommitted reserves.
89. The target level of uncommitted reserves must be sufficient to insure against reasonable risks and should be set out as both a figure and a proportion of monthly expenditure. If the target level is significantly more or less than 3-6 months of expenditure, this must be justified.

90. Any accrued practising fee reserves in excess of the target level ought to be returned to the regulated community by a corresponding reduction in the practising fee for the following year, or the approved regulator should explain why this would not be appropriate.

## **Guidance on Specific Rules**

### Rule 19

91. Rule 19 allows an approved regulator to hold reserves of practising fee income, but only if these are held and accounted for separately from any other funding. Essentially this requires the approved regulator to ring-fence the practising fee income or reserves generated by surpluses from any other income or reserves. The LSB would expect practising fee reserves to be held in a separate account and to be subject to separate budgeting than other reserves or income held by the approved regulator.

### Rule 20

92. Rule 20 reflects the LSB's obligation under the Act (section 30 and the Internal Governance Rules 2019 made under it) to ensure that regulatory functions are not prejudiced by representative functions and that decisions relating to regulatory functions are, as far as reasonably practicable, independent.
93. The LSB would expect the regulatory body to form its own policy on practising fee reserves and to have management control over those reserves, as far as reasonably practicable within the structure of the organisation.
94. Each approved regulator should set out the arrangements it has in place to comply with this Rule. For example, if the regulatory body has been incorporated as a separate company, it should be this company which holds and controls the account with the practising fee reserves. If the regulatory body is not a separate company and the account is therefore held by the approved regulator, the LSB would expect there to be safeguards in place to ensure that decisions relating to this fund are made by the regulatory body without undue interference by the approved regulator.
95. If the approved regulator intends to retain any part of the practising fee reserves, e.g. if they are allocated to an activity for a permitted purpose which is not a regulatory function, the approved regulator must state this expressly. They must set out the amount retained (both as a figure and as a percentage), the activity and permitted purpose to which the reserves will be allocated and why it is not practicable for the regulatory body to control this part of the reserves.

### Rule 21

96. Approved regulators should have a clear policy on how it sets the target for the level of its reserves and manages those reserves, which it reviews each year.
97. The LSB expects each approved regulator to be prudent in setting their target level of reserves. They should seek to balance sufficient insurance against known risks against unnecessarily increasing the cost to the regulated community. To assist the approved regulator to achieve this, they should state the different types of reserves

held and the risks attached to each, which must include a separate reserve for practising fee funds.

98. The approved regulator should set out how the target level of their reserves have been reached. In particular, they should summarise the major strategic risks which these funds aim to mitigate and the level of risk attached to each.
99. Types of reserves which an approved regulator may hold include, but are not limited to; practising fee reserve, pension reserve, revaluation reserve and other restricted reserves (i.e.. reserves which are not available to the general fund). Each approved regulator should set out the risks connected to each distinct type of reserve and their rationale for setting the target level of each fund.
100. Each approved regulator should distinguish between committed and uncommitted reserves. Committed reserves are defined in Rule 1 as ‘the sum of reserves held by the approved regulator or regulatory body for ring-fenced commitments, such as pensions or capital funding’. The approved regulator should set out the commitment and the target level of the reserve to meet that commitment. Part of the practising fee reserve may be a “committed reserve” if the approved regulator or regulatory body has identified a specific risk or risks which that fund has been allocated to.
101. Uncommitted reserves are defined in Rule 1 as ‘the sum of reserves held by the approved regulator or regulatory body which have not been allocated to any ring-fenced commitments’. The target level should be expressed as both a figure and also as a proportion of monthly expenditure.
102. Each approved regulator should specify the level of reserves held in each fund at the date of the application. If the level of reserves held exceeds or falls below the target level set for the year, they should explain how this has been taken into account in setting the target level of that fund for the following year.
103. They should have a mechanism in place for returning accrued practising fee funds which exceed the target level and the LSB would normally expect this to take the form of a reduction in the practising fee for the following year. If the approved regulator does not intend to return the accrued funds in this way, they should explain why this would not be appropriate.
104. If the level of reserves held are below the target levels, we expect the approved regulator to provide the answers to the following questions in their practising fee application:
  - What steps are being taken to increase the reserves to the target level set out in their policy?
  - What is the timescale required to achieve this?
  - What will the effect be on the practising fee in the years until the target level is reached?
  - How will they ensure that the delivery of their strategic aims is not compromised?

## Rule 22

105. This rule reflects the LSB's expectation that each approved regulator will be prudent in setting its target level of practising fee reserves; they should be set at a sufficient level to insure against reasonably foreseeable risks, but not so high as to create unnecessary cost to the regulated community. If the approved regulator has consistently held a significantly different level of accumulated reserves than their target level, this would suggest that the target level is not being set prudently and ought to be reflected in their application for approval by a change in approach.
106. The LSB expects the target level of practising fee reserves to be stated as a figure and a proportion of monthly expenditure. The LSB considers that the target level should normally be between 3-6 months of practising fee expenditure to ensure a reasonable level of financial resilience. Any target level which is below or above this proportion will require an explanation from the approved regulator as to how this nonetheless reflects a proper estimate of risk.

## Rule 23

107. The LSB does not expect approved regulators to provide information about reserves which is not derived from the practising fee and is solely for representative functions. An approved regulator may choose to provide this information as part of the overview of their financial position but is not obliged to inform the LSB of this.

## **Section I: Consultation and Engagement (Rules 24 and 25)**

### **Purpose of Section**

108. This section sets out the LSB's expectations that approved regulators should consult and engage with their regulated community. Approved regulators should use the consultation as an opportunity to explain the costs, benefits and value of regulation. The LSB intends this to encourage meaningful engagement, to promote debate and discussion, and ultimately to support ongoing improvement in standards of regulation across the sector.

### **Key Points**

109. Each approved regulator must consult the regulated community:
  - about the programme of activity which the practising fee will fund,
  - on the level of the practising fee and any increase or decrease from the previous year; and
  - on the distribution of the practising fee across the regulated community with any changes to that distribution from the previous year.
110. Approved regulators must demonstrate that they have engaged effectively and that they have taken the regulated community's views into account.
111. Approved regulators must provide information of the benefits which they expect to derive from the programme of activities.

## **Guidance on Specific Rules**

### Rules 24 and 25

112. Rules 24 and 25 require approved regulators to consult and engage effectively with as many members of their regulated community (as reasonably practicable) on how they propose to apply the practising fee to the programme of activity for the practising fee year. The LSB expects that the representative part of the approved regulator and any other relevant representative bodies will be involved in this process.
113. Approved regulators should set out the steps they have taken to engage and consult with their regulated community, the level of engagement, the responses and how these have been taken into account. The LSB will consider the efforts made by the approved regulator to engage, not only the response rates.
114. Each approved regulator should demonstrate that they had produced consultation materials which are fit for purpose, removed any barriers to participation (such as short consultation periods unless justified), provided easy mechanisms to respond, and made all reasonable efforts to reach those with an interest.
115. Rule 13(a) requires that approved regulators make clear how they will assess the benefits of these activities. The LSB expects approved regulators to publish an account of what the expenditure of practising fee in the previous practising fee year has achieved.

## **Section J: Impact Assessments (Rules 26 to 30)**

### **Purpose**

116. Rules 26 to 30 aim to ensure that approved regulators give meaningful consideration to equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession. This section further aims to ensure that approved regulators strive to deliver better, proportionate regulation. Approved regulators should demonstrate a clear understanding of any changes or risks to their regulated community and how that has been taken into account when setting the practising fee.

### **Key points**

117. Before submitting a practising fee application to the LSB, each approved regulator is required to conduct an initial Equality Impact Assessment (“EIA”) and an initial Regulatory Impact Assessment (“RIA”).
118. A full EIA must be carried out if the initial EIA finds an adverse impact on persons with (any of the) protected characteristics as defined under the Equality Act 2010. This must also be completed prior to a practising fee application being submitted to the LSB.
119. A full RIA must be carried out if one of a number of conditions set out in Rule 28 are met.



120. The approved regulator is required to provide a summary of the assessments and their findings, explain details of action taken, or if no action was taken, why this was not necessary or practicable.

## **Guidance on Specific Rules**

### Rule 26(a)

#### *Initial assessment*

121. Rule 26(a) requires approved regulators to conduct an initial assessment of the anticipated impact of the practising fee level on members of their regulated community with any protected characteristic (as defined in the Equality Act) prior to submitting its practising fee application for approval.
122. An initial EIA should consider the likely impact of the level of the proposed practising fee on the regulated community with protected characteristics. This should include considering what impact it might have on barriers to access or progression for certain groups.
123. The LSB expects equality impact assessments to be informed by consultation with those impacted by the proposed fee. Therefore, an initial EIA should be prepared in a suitable form and within adequate time to gain input from stakeholders and inform the approved regulator's decision making.

### Rule 27

#### *Full EIA*

124. Rule 27 states that if the initial EIA identifies an anticipated adverse impact on members of their regulated community with any protected characteristic, approved regulators must conduct a full impact assessment. This will demonstrate that the approved regulator properly understands the impact of the proposed practising fee on different groups with protected characteristics.
125. As a minimum, the LSB would expect that a full EIA should:
- Identify any potential adverse impacts on those with protected characteristics and what alternative options have been considered to avoid this.
  - Detail and factor in relevant input and responses to consultation from impacted groups and consider whether more targeted engagement with these groups is required.
  - Identify remaining risks to equality, diversity and inclusion and what mitigating action has been considered and/or put in place.
  - Include clear plans for monitoring and responding to the actual impact and evaluating the effectiveness of any mitigating action that has been put in place.

### Rule 26(b)

#### *Initial assessment*

126. Rule 26(b) sets out the LSB's requirement for approved regulators to conduct an initial RIA. The LSB expects the level of detail required in an RIA to be proportionate

to the degree of impact of the practising fee on the regulated community and the regulatory objectives.

127. The initial assessment of the regulatory impact of the practising fee will involve approved regulators determining whether there is an impact (positive or negative) on the regulated community or any of the regulatory objectives, flowing from the practising fees that it is proposing.
128. If the initial RIA determines that its proposed fees may give rise to an adverse impact on a significant proportion of the regulated community or may be prejudicial to any of the regulatory objectives, then a full RIA should be conducted.

## Rule 28

### *Full RIA*

129. Rule 28 sets out the LSB's requirement for approved regulators to conduct a full RIA.
130. In certain circumstances the LSB will expect approved regulators to proceed to conduct a full RIA without first conducting an initial RIA. These are:
  - When the proposed practising fee involves a more than minimal increase or decrease to the amount payable by the regulated community than was payable the previous year; or
  - if there has been a significant and unforeseen event or circumstance which arisen during the previous year which has had a substantial impact on the conduct of legal services by the regulated community (e.g. Covid-19 or other market shock).
131. As a minimum, the LSB would expect a full RIA to include:
  - Identification of any potential adverse impacts on the regulated community or any regulatory objective flowing from the proposed fees, including those related to significant or unforeseen events in the operating environment.
  - Identification of the alternative options (alternative practising fee proposals) which have been considered to avoid any potential adverse impact.
  - An explanation of what risks remain and what mitigating action has been considered and/or put in place.
  - Clear plans for monitoring and responding to the actual impact and evaluating the effectiveness of any mitigating action that has been put in place.
132. The RIA should be prepared in a suitable form and within adequate time to gain input from stakeholders and inform the approved regulator's decision making.
133. This assessment will allow approved regulators to balance the costs and benefits of the proposed level of practising fee and demonstrate a clear understanding of the context in which they operate.

## Rule 30

134. As set out in Rule 30, approved regulators should provide a summary of the assessments carried out, (including whether these were initial or full impact assessments) and the findings of those assessments.
135. Approved regulators must also set out details of any action taken as a result of those findings or, if no action has been taken, an explanation of why this was not necessary or practicable.

## **Section K: Decision by the Board (Rules 31 to 33)**

### **Purpose**

136. The aim of this section is to set out in detail the matters of which the approved regulator must satisfy the LSB for their practising fee application to be approved, as provided for in Rules 31 to 33.

### **Key Points**

137. Each approved regulator must address all of the matters set out at Rule 31 to the LSB's satisfaction for approval of their practising fee.
138. The LSB is unlikely to refuse the entire application over minor non-compliance with the Rules and associated sections of the Guidance, however the approved regulator may be required to resubmit parts of the application or to send further information to address these.
139. The LSB is likely to refuse the application, in whole or in part, if the approved regulator has not satisfied the LSB that the practising fee complies with Rule 31(b) to (d).
140. There should be arrangements in place for the continued operation of the approved regulator in the event that the practising fee is not approved and as a consequence, collection of practising fees is not possible within the intended timeframe. The arrangements could include reliance on uncommitted reserves, and/or allowing extra time when submitting the application in case it is refused, to allow for it to be re-submitted in whole or in part for approval.
141. The LSB would encourage each approved regulator to engage informally with the LSB before submitting their application so any potential issues may be identified and addressed.
142. Each approved regulator must sign a statement of compliance within the pro-forma application at Annex A before submitting their application for approval. The LSB expects each approved regulator to be satisfied of their own compliance before signing this statement.

## Annex A: Proforma Application for Approval



### **Pro forma for Practising Fee (PCF) applications for approval by the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

#### **Preamble**

The application by an approved regulator to the LSB under section 51 of the Act for the approval of PCF must be completed using this form<sup>1</sup>.

This form is to ensure consistency of information provided in all PCF applications. It reflects the Practising Fee Rules 2020<sup>2</sup> (Rules) and accompanying Guidance to Approved Regulators on PCF applications<sup>3</sup> (Guidance) and does not impose new requirements.

An approved regulator must comply with the Rules and have regard to the Guidance<sup>4</sup> in applying to the LSB for approval of their level of PCF. In case of conflict between the Rules, Guidance and the Act, the provisions of the Act prevail.

As set out in paragraph 141 of the Guidance, we encourage the approved regulator to engage in early discussions with the LSB before submitting their application so any potential issues may be identified and addressed.

The approved regulator submitting this form takes responsibility for the accuracy and completeness of the information provided. The approved regulator must sign the statement of compliance at the end of the form before submitting its application for approval.

On receipt of a PCF application, the LSB will notify the approved regulator in writing of the time period in which a decision will be provided, subject to any extension, and will notify the approved regulator of its decision in writing pursuant to Rule 11.

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<sup>1</sup> As required under Rule 9(a) of the Practising Fee Rules 2020.

<sup>2</sup> Link to published revised Rules.

<sup>3</sup> Link to published revised Guidance.

<sup>4</sup> As required under 4 of the Practising Fee Rules 2020.

### **Confidential or commercially sensitive information**

We intend to publish all PCF applications on our website<sup>5</sup>. If any information submitted as part of the application is considered by the approved regulator to be confidential or commercially sensitive, please state this in the cover email or letter which accompanies the application and provide reasons as to why the information in question should not be published.

### **Contents of this form**

Section(s)	
I	Summary and overview.
II to VI	The specific categories of information (which reflect the Rules) that approved regulators must provide when submitting a PCF application, to enable the LSB to assess the application, as applicable.
VII	Description or copy of the information that will be provided to fee paying members.
VIII	Checklist of information enclosed with the application and allows for the submission of any supporting materials.
IX	Compliance statement.

The minimum level of information we expect from approved regulators is set out in bullet points. However, additional information may be provided, for example by reference to the Guidance. Space is provided below each section for approved regulators to set out application information.

### **Filling in the form**

We would prefer to receive complete forms electronically, but hard copy PCF applications are also welcome. Completed forms should be sent to:

Email: [schedule4approvals@legalservicesboard.org.uk](mailto:schedule4approvals@legalservicesboard.org.uk)

Posted applications should be sent to:

Legal Services Board  
3rd floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

<sup>5</sup> <https://www.legalservicesboard.org.uk/our-work/statutory-decision-making/section-51-practising-fees>

**PRO FORMA**

**I. Summary and overview**

This section asks for background information relating to the proposed PCF.

- Briefly summarise the proposed fee structure and levels and state whether the proposal is for an increase, decrease or no change to the PCF relative to the previous year. Include an explanation of why the fee level has changed (if applicable).

*An application by the approved regulator must satisfy the LSB of all the matters in Rule 31 for the LSB to approve the PCF. Rule 32 provides that if the approved regulator fails to satisfy the LSB of any of the matters in Rule 31, the LSB may refuse to approve the entire or part of the practising fee and/or require the approved regulator to resubmit the application addressing the matter(s) set out in Rule 31.*

- Explain the arrangements in place for the continued operation of the approved regulator in the event that the practising fee is not approved and as a consequence, collection of practising fees is not authorised within the intended timeframe.

- Please state how this application addresses concerns raised by the LSB in the previous year's PCF application, or under the regulatory performance assessment framework (if applicable).

- If any potential issues were identified in informal engagement with the LSB prior to the submission of an application, please state these, and how they are addressed, in the application.

## II. Allocation of practising fee to permitted purposes (rules 8, 13, 14-16)

Section 51(2) of the Act makes clear that an approved regulator may only apply amounts raised by practising fees for one or more of the *permitted purposes*. Further, as a regulatory function the PCF must be set and applied in accordance with section 28 of the Act.

- Provide an outline and explanation of the programme of activity<sup>6</sup> to be funded by the PCF during the practising fee year and which permitted purpose(s) each activity within the programme of activity is relevant to.
- For approved regulators with both representative and regulatory functions, set out the amount of the practising fee which will be allocated to the regulatory body and the amount to be retained. Where there are shared services between the approved regulator and the regulatory body, it should be made clear the costs that are shared services and the basis of the apportionment of cost.
- A template for setting out this information is provided below, which is optional to use.

Description of activity	% of total practising fee (and actual figure) allocated to activity	Permitted purpose	Strategic objective it is relevant to/ or expected benefit	Representative or Regulatory activity
e.g.				

- Where the activity is for a less clearly defined permitted purpose, including the permitted purposes set out at Rule 8(e)-(g), please explain in more detail how the activity will support this purpose.
- Pursuant to Rule 16, if any amounts raised by the PCF will fund an activity for multiple purposes, one or more of which is not a permitted purpose, please explain the reason why the amount or activity could not be delineated to only be applied for permitted purpose(s). Please also explain the basis on which the approved regulator is satisfied that the funding nonetheless falls within the scope of section 51(2) of the Act.

<sup>6</sup> 'Programme of Activity' is defined in the Rule 1 (Definitions) as the activities which will be funded, in whole or in part, by the practising fee.

- Description of how the activities that the fee will be applied to are consistent with the regulatory objectives and the most appropriate way of meeting those objectives (as far as reasonably practicable).

### III. Financial information (rules 13, 17-18)

This information must be prepared on the basis of accruals rather than cash, if reasonably practicable.

- **Income and expenditure forecasts**, including practising fee income, for three years from and including the year for which the practising fee is to be levied. This should incorporate:
  - total income from all sources (PCF income and other sources), including any commercial income arising from PCF funded permitted purposes.
  - anticipated expenditure, including the payment of levies imposed on the approved regulator and expenditure on non-permitted purpose activities.
  - summary of how the budget was arrived at, including any consultation between the regulatory and representative arms.
- **Financial information for the previous year and actual expenditure**, including a comparison of actual and budgeted income and expenditure. Financial information provided for the previous year should include:
  - forecasted budget and actual expenditure and income
  - PCF income collected and a breakdown of how it was allocated or spent by activity.
  - an explanation of any variation in total PCF spending.



#### **IV. Reserves (rules 13, 19-23)**

An approved regulator may only hold reserves generated from surpluses of the practising fee separately from any other funds.

- Explain the reserves policy. In particular, this should address:
  - how the target for the level of reserves is set and managed
  - the different types of reserves held, which must clearly distinguish practising fee reserves from other reserves
  - the target level for committed and uncommitted reserves
  - how the approved regulator will manage any accumulated reserves to date.
  
- If there was any variance at the end of the previous year between the target level of reserves and accumulated reserves, please provide an explanation of how this has been taken into account as part of this application.

#### **V. Consultation on PCF (rules 13, 24-25)**

This section requires information in respect of Rules 24 and 25 which requires approved regulators to consult with relevant authorised persons about the programme of activity to which the practising fee will be applied and the level of the practising fee, and engage effectively with as many relevant authorised persons as reasonably practicable.

- Description of the consultation process conducted with relevant authorised persons on the programme of activity and the level of PCF<sup>7</sup>. To include:
  - length of time the published consultation was open
  - the level of engagement and responses from relevant authorised persons
  - summary of consultation responses
  - summary of how consultation responses have been taken into account, including changes to the PCF proposals as a result of consultation responses
  - details of consultation with non-commercial bodies (e.g. Law centres federation, Citizens Advice etc.) or an explanation of why their views had not been sought.

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<sup>7</sup> Approved regulators should consult annually on their programme of activity irrespective of whether if they are proposing a fee increase, if the fee has been static or has fallen.

## **VI. Impact assessments (rules 13, 26-30)**

This section requires information in respect of Rules 26-30 which collectively, stipulate that initial equality and regulatory impact assessments must be carried out and set out in the circumstances in which full impact assessments of both kinds must be conducted.

- Summarise the initial and (where applicable), full equality impact assessment and regulatory impact assessment carried out and the findings. In particular, this summary should cover how the proposed PCF may potentially impact on various groups, especially those with protected characteristics under the Equality Act 2010 within the approved regulator's membership.
- Provide details of any action taken as a result of findings, or an explanation as to why this was not necessary or practicable.

## **VII. Transparency of PCF information to relevant authorised persons**

- Description or a copy of the information that will be provided to fee-paying members. This should be clear and accessible and include the following information:
  - the level of the PCF
  - how the PCF has been set
  - a breakdown of how the PCF income will be allocated to non-regulatory/regulatory and shared services
  - an explanation of why commercial income arising from PCF funded permitted purposes is to be used for non-permitted purposes.
  - an accurate presentation and representation of the LSB and Office for Legal Complaints (OLC) levies so the regulated community is clear about the proportion of PCF attributable to the levies

## VIII. Checklist – Enclosures

<b>Income and expenditure forecasts</b> , including practising fee income, for three years from and including the year for which the practising fee is to be levied.	<input type="checkbox"/> Enclosed
<b>Financial information for the previous year</b> , including a comparison of actual and budgeted income and expenditure.	<input type="checkbox"/> Enclosed
<b>Copy of the information that will be provided to fee paying members</b> (if description is not provided in section VII).	<input type="checkbox"/> Enclosed

Details of any other supporting documents provided with the PCF application (optional):

## IX. Compliance Statement

By submitting this application form:

- I certify that the information provided in this application is accurate and complete to the best of my/our knowledge and I/we have taken reasonable steps to ensure that the application complies with the Rules.

<b>Date</b>	
<b>Name of signatory</b>	
<b>Position of signatory</b>	

Indicate below who the LSB should get in contact with for any questions regarding this application.

- Same as person who has signed the compliance statement
- Other (provide name and email below)