



Approval of 2019 Practising Certificate Fee (PCF) application made by the Bar Council (BC) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

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

Overview of PCF application and decision

6. The application submitted by the BC (on behalf of the BC and BSB) provides that the income bands which determine the level of PCF to be charged to individuals will remain the same as in 2020⁴, as set out in the table below. The BC's projected total PCF income for 2021 is £11.9m (a decrease from £15.4m in 2020), based on the

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

² Ibid, Rules 10 and 11.

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

⁴ The income bands were introduced in 2018.

average PCF and number of barristers expected to pay the fee⁵. This forecast takes into account the estimated impact of Covid-19 on barrister's income for 2020⁶.

Band	Income Band	2020/21 Fees
1	£0- £30 000	£100
2	£30001 - £60 000	£246
3	£60 001 - £90 000	£494
4	£90 001- £150 000	£899
5	£150 001 - £240 000	£1,365
6	£240 001 - £500 000	£1,850
7	£500 001 - £1 000 000	£2,500
8	£1 000 001 and above	£3,000

7. The LSB's decision is to approve in full the levels of the PCF for 2021 set out in the BC's application.

LSB assessment

Development of the overall budget and application

Evidence that the regulatory arm has led the development of the application

8. The application explains that the BSB has set its budget independently and it was prepared to align with the strategic aims set out in the BSB's strategic plan for 2019-22⁷. Budget options were scrutinised by the BSB Planning, Resources and Performance (PRP) Committee and the final bid was approved by the BSB Board. The joint BC Finance Committee agreed the regulatory budget.
9. We are therefore satisfied from the information provided in the application that the regulatory body has led the development of its part of the budget and application.

Clarity and transparency of overall budget setting

10. The LSB is satisfied with the budget setting process outlined in the application and considers that it provides a reasonable level of information on the development and setting of the overall budget. This includes a clear breakdown of the expenditure of projected PCF income for 2021/2, the split of expenditure based on forecast costs, for regulatory permitted purpose activity, non-regulatory permitted purposes activity and other activities that are not regulatory or permitted purposes activity⁸ and the BC/BSB's plans to address the shortfall in PCF income.
11. Total income from PCF is projected to decrease to £11.9m, (a decrease of 24% compared to 2019/2020) due to the drop in barristers' income. PCF income allocated to the BC will be £3.5m. The BC's permitted purposes expenditure will be £4.9m (an increase of 0.2m on 2019/20). The BC's operating expenditure will decrease to £4.08m (a decrease of £181 000 or 4% on 2019/20).

⁵ Table 3 of the application.

⁶ This figure represents the worst case scenario (the best being £14.6m) and is based on feedback from barrister surveys which shows that most sectors have been impacted by Covid-19.

⁷ <https://www.barstandardsboard.org.uk/uploads/assets/4b599307-da48-4e4e-a8e2ff3bf83934bd/bsbstrategicplan2019-22.pdf>

⁸ For example, the BSB's share of the BC's joint overhead and support costs.

12. The PCF income allocated to the BSB will be £8.4m. The BSB's permitted purpose expenditure will be £12.6m (an increase of 0.7m on 2019/2020). The BSB's operating expenditure (excluding shared services) is expected to increase to £6.7m (an increase of £117,000 or 3% from 2019/20). However, this will be offset by a decrease in capital expenditure of £613,000. The BSB has explained that the increase in operating expenditure is predominantly due to the creation of two new posts in Regulatory Operations needed to deliver its core regulatory and enforcement work.
13. The BC and BSB expect to address the shortfall in PCF income by drawing on cash reserves and seeking a loan through the government backed Coronavirus Business Interruption Loan Scheme (CBILS) with loans up to £5m. This has been provisionally approved subject to finalisation of the loan documentation.
14. The table on page 6 of the application shows the amount of BSB expenditure that will be funded through the PCF (£6,912 000) and the remainder of the BSB's expenditure (£4,156 000) which will be funded through a combination of the CBILS loan and reserves. In response to the LSB's enquiry, the BC has confirmed that even if the CBILS is not given final approval, the BSB's budget will be protected.

Evidence that immediate and medium-term needs have been taken into account.

15. The BC and BSB plan for a total expenditure of £19.25m for 2021/2 (£601,000 higher than the 2020/1 budget). The combined PCF and other non-PCF income is forecast to be £16m⁹. The BC has explained that the shortfall in PCF income will be met through cash reserves and the CBILS.
16. The BC notes in its application that it has identified a number of options for reducing costs, although these have not been incorporated into the budget. The BC's intention is to review this following the PCF collection this year when the actual impact of has materialised, to assess the actions which are needed to ensure its finances align with its five year forecasts.
17. The BC has stated that the budget is part of a medium-term strategy to enable it to smooth the impact of the Covid-19 over a number of years and mitigate as far as possible the effects on the profession. It will allow the BC to rebuild reserves over time and recover financial resilience.
18. The BC has provided a summary of the financial outlook for itself and the BSB beyond 2021 and indicative income and expenditure to 2024/5¹⁰. The BC expects to generate surpluses from 2023/24 that will be used to rebuild the depleted reserves and provide for greater financial resilience.

Reserves

19. The BC's policy is that the reserves should be the higher of 4 months operating costs or £3m. The reserves position at the end of the last financial year was £4.7m. At a forecast spend of £19.25m for this year, closing reserves should stand at no less than

⁹ Table 10 of the application.

¹⁰ Table 4 of the application.

£6.4m although Table 5 notes that it will be £3.6m for 2021/22 as reserves will reserves will be drawn upon to make up the shortfall in PCF income in 2021/22.

20. This includes a separate permitted purposes reserve which arises from the surplus or loss on any BSB regulatory activity or BC's representative permitted purpose activity. This reserve is only used for permitted purposes. The permitted purposes reserve had recovered to a balance of £185,000 (from a deficit of £1.2M in the previous year). Currently the BC do not have a target level for the permitted purpose reserve. The cash reserves at the last year end amounted to £1.7m. The BC expect the cash reserves to reach this level again in 2024/5. The reserves policy will be revised in 2021 with targets for permitted purposes and cash reserves being set by the joint Finance Committee based on the most up to date forecasts.
21. The BC maintains a separate pension reserve and a legal reserve (which is a designated permitted purpose reserve) to hold and provide visibility of costs of the BSB defending against a legal challenge following the cessation of third party insurance cover in 2019 on the grounds that it was considered to be uneconomic¹¹.
22. The BC has previously explained the arrangements regarding the BSB's access to the reserves. Although the BSB has not had the need to access the permitted purposes reserves to date, in principle it has unfettered access to the permitted purpose reserve and that any major unbudgeted expenditure drawing on it would be approved by the BSB's own Planning, Resources and Performance Committee, its Board and then the joint Finance Committee. Any draw down on the legal reserve is subject to the exclusive governance of the BSB because of the purpose of the reserve. Any decision to increase or decrease the level of this reserve would be subject to the approval of the joint Finance Committee.
23. While the LSB commends the BC for providing detailed information about future plans despite that not being a current requirement for organisations which are not increasing their PCF levels, we note that PCF income will fall and only slowly recover; reserves will be depleted; CBILS will alleviate cash-flow concerns (but will add to finance costs at the time the BC is trying to replenish reserves); and expenditure is rising (capital costs are down but the underlying operational spend is increasing above inflation).
24. The mitigations are that by setting in place a medium-term strategy now, rebuilding can be done in a controlled way without sacrificing operational effectiveness in delivering regulatory needs in the meantime. The projected income for next year is a worst-case scenario so there should be no further financial shocks. Any improvement on the pessimistic budget will reduce the first-year loss and should accelerate the point at which financial equilibrium is reached.
25. We note that the BC has indicated that it would be prepared to consider future PCF increases if the need arises but has also identified options to reduce its costs although

¹¹ The Legal reserve was set up in March 2018 because the cost of the premiums for professional indemnity insurance for BSB regulatory work (typically, to defend appeals in the High Court and judicial reviews of individual disciplinary decisions) was becoming prohibitive compared to the actual pattern of costs incurred. Therefore, a restricted reserve was set up where the notional cost of the insurance premiums would be used to build up a Legal reserve exclusively for the BSB, to cover defence costs and damages awarded against the BSB.

this has not yet been incorporated in its budget. If the BC proposes increases in the PCF in the future, we would expect it to demonstrate that it had taken into account value for money considerations and any related savings that could be made.¹²

Consultation on PCF

Summary

26. As it has done in previous years, the BSB sent a regulatory update on 9 December 2020 inviting comments from registered and unregistered barristers. In addition, the consultation was published on the BSB website on 9 November 2020 and closed on 14 December 2020.
27. The BSB posted the consultation link on Twitter, LinkedIn, Facebook followers on 17 November and 9 and 11 December and put a banner on MyBar, with a link to the consultation, in November 2020.
28. The BC separately included a link to the consultation and messaging inviting responses to it in three editions of the Bar Council's fortnightly e-newsletter and BarTalk.
29. The consultation generated a total of 13 responses, of which 7 supported the PCF proposal and 6 did not because they did not consider the PCF to represent value for money. No changes were made to the proposed level of PCF as a result.
30. We acknowledge the BC's and BSB's efforts to engage effectively with its regulatory community on the PCF and budget proposal for 2021/22 and welcome the longer consultation period of 5 weeks. We would encourage the BC and BSB to consider how it might encourage more meaningful engagement, on the levels of PCF, for example by combining this with a consultation on their proposed programmes of activity to provide more context.

Permitted purposes

Allocation to permitted purposes

31. The application notes that all PCF income allocated to the BSB is used for the regulatory permitted purposes.
32. The application provides a breakdown of the non-regulatory permitted purpose activities undertaken by the BC based on the staffing resource allocated to them¹³. The non-regulatory permitted purposes activities are grouped into five themes and are particularised in the application. These are:
 - Equality, Diversity, Inclusion, Education & Training and Social Mobility
 - European Activities
 - International

¹² The BC has said that it will continue to review its cost base. It has identified a number of options for reducing its costs, although these have not all been incorporated in the budget at this stage. The budget will be reviewed after the PCF collection next year is completed to assess what actions are needed to keep its finances aligned with its five-year forecasts.

¹³ Table 11 of the application.

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- Law Reform, Regulatory and Ethics Issues
- Remuneration and Legal Practice and

33. A proportion of staffing resource is allocated to non-permitted purposes activities and is funded independently.

34. The BC has explained that it intends to fund some permitted purposes activity by other means such as commercial income or the Bar Representation Fee.

LSB targeted review

35. In our 2019/20 Business Plan we set out our intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.

36. Having engaged closely with approved regulators and their regulatory bodies, including the BC and BSB, the LSB published a consultation on the new draft PCF Rules and Guidance on 30 July 2020. The consultation closed on 8 October 2020. We received responses from the BC and the BSB. Having carefully considered these responses, along with the other consultation responses, we are aiming to publish the new PCF Rules and Guidance later this month which will take effect for the PCF cycle in 2021 and onward.

Transparency of PCF information to fee paying members

Clarity of information provided

37. As part of its communication and engagement on the PCF consultation the BC and BSB:

- shared the PCF income bands and fees stating they would remain the same
- set out its budgeted expenditure for 2021/22 providing the split between the BC and the BSB and explained how rising costs will be accommodated without increasing the PCF levels (by relying on CBILS and reserves)
- set out its income prediction for PCF and non-PCF income and the split between the BC and BSB
- indicated that PCF may be subject to modest increases in the years ahead to cover the cost of regulatory permitted purposes, repay CBILS and to rebuild cash reserves.

38. The BC and BSB have a joint plan in place to communicate with Barristers, chambers and employer administrators through post, email and social media channels up to and beyond the opening of the Authorisation to Practice process in February 2021, when renewal of the practising fee certificate and PCF becomes payable.

Regulatory and Equality Impact assessment

39. The BC has explained in its application that the impact of the proposed PCF level on protected characteristics and equality have been considered. An Equality Impact Assessment has been conducted by the BC for 2021/22. The BC expects that due to Covid-19 many barristers will be declaring less income than in the previous year which in many cases will lead to the barrister being in a lower income band for their

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PCF. Therefore, those barristers whose income has been hardest hit will see the greatest benefit in terms of a reduced PCF.

40. It has also sought to address any perceived disadvantage to those returning to practice after taking parental leave (by offering the PCF at no cost during the leave period and reducing the level of PCF to the lowest income band on return to work) and reimbursing those who have had to give up practice due to ill health.

41. In 2020/21 the BC introduced split payments for barristers that had delegated their payments to chambers. This allowed the chambers to split the payments into two halves. The aim was to try and support barristers and chambers through the difficult Covid-19 period. The BC are aiming to introduce split payments for all barristers if technically and legally feasible for the 2021/22 Authorisation to Practice process.

Decision

42. The LSB has approved the PCF application submitted by the BC for 2021/22 under section 51 of the Act.

Summary of expectations for next application

- If the BC proposes increases in the PCF in the future we would expect it to demonstrate that it had taken into account value for money considerations and any related savings that could be made (paragraph 25)
- The BC to consider how it might encourage more meaningful engagement from its regulated community (paragraph 30).

Matthew Hill, Chief Executive

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

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