

BSB statement on outcome of the litigation fees consultation

The BSB received three responses to the consultation from individuals who were considering applying to conduct litigation. There was general agreement that the BSB should charge an application fee that reflects the administrative costs of authorisation to conduct litigation, albeit one respondent suggested that we should consider including the costs in the general practising certificate fee (PCF) or making the fee refundable if the application was unsuccessful. The BSB continues to believe that those seeking to benefit from the process should pay for it. Whilst the application fee itself is not refundable, it is not proposed at this stage to levy an additional “authorisation fee” for the conduct of litigation. This will be included in the general PCF unless evidence suggests that regulating litigation leads to increased risks (and hence increased costs) for the BSB, in which case we will consider whether to impose a separate annual fee for litigation authorisation.

On the level of fee, which was proposed as £90, opinion was divided. Whilst one respondent believed the fee to be reasonable, another suggested that the process may be overly bureaucratic and suggested that the BSB needs to demonstrate that it is not ‘making a profit’ out of the fee. The third respondent felt the fee was broadly reasonable, but that there should be a graduated fee based on seniority in order to avoid placing a greater burden on the more junior Bar. He also queried whether those previously authorised to conduct litigation as employed barristers would have to re-apply and pay the fee. The BSB will monitor closely the costs associated with the application process, but our initial planning suggests that the fee set is reasonable based on anticipated staffing needs. The main purpose of the fee is cost recovery and given it is relatively low (compared with the £165 charged for assessing waiver applications under the old litigation regime) we do not believe it would be proportionate to offer a graduated fee. Barristers previously authorised in an employed capacity will continue to be authorised in that capacity without seeking further authorisation. If they wish to undertake litigation in a self-employed capacity, however, they will have to complete the form to show that they have appropriate systems in place to manage litigation in chambers. We will waive the fee for these barristers.