



REGULATING BARRISTERS

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Legal Services Board  
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Sent by email only

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Dear Karen

**LSB consultation: changes to rules made under section 51 of the Legal Services Act 2007**

I am pleased to be able to respond to the above consultation on behalf of the Bar Standards Board.

As you will appreciate, certainty about the process for approving fees and the timescales for doing so is important for the frontline regulators, for whom this process is a key component of their annual revenue-raising. With that in mind, we would like to draw the LSB's attention to a possible flaw in the current Practising Fee Rules that is not dealt with in the consultation or your proposals for change.

Section 51(7) of the Legal Services Act 2007 ("the Act") sets some requirements for the LSB's rules. In particular, it requires the rules to make provision about the time limit for the determining of an application. The current rules (at 9(a)) fail to meet that requirement as there is no time limit stated. There are significant operational risks for the frontline regulators if we do not have certainty about when the LSB will make a decision. In addition to the specific comments below, we believe it is important that the LSB's process should not be unnecessarily bureaucratic or time-consuming, nor ask for additional evidence beyond what is of course necessary in the exercise of its statutory duties.

*Question 1: Do the two proposed additional criteria in Rule 10 adequately explain the matters that the LSB will take into account when considering a PCF application?*

Broadly yes. It is clearly stated that the LSB should exercise its statutory decision-making in a way that is compatible with the regulatory objectives, which is in line with section 3(2) of the Act. The BSB makes a judgment each year about what resources are necessary for it to fulfil its statutory duties, in the light of the regulatory objectives. The LSB should not use this process to impose its own views about what the BSB should be doing unless there is clear

evidence of detriment to the regulatory objectives. Indeed, by the time a practising fee application reaches the LSB, we will have completed our business planning and it will be too late to impose such a view on activity anyway.

The BSB agrees that there should also be transparency over “derivative income” that is generated from PCF-funded activities. It is important that the regulated community and others understand how any compulsory fee is arrived at, the extent to which PCF-funded activity may generate further income and if so how such income is spent. We note that the proposed rule 10(f) could be interpreted more broadly. We support transparency, but would like to ensure that the process is not unduly complex or time-consuming. We would therefore recommend a slight amendment:

“10(f): clarity and transparency on the allocation of all the Approved Regulator’s financial resources, whether or not those resources arise from permitted purposes, to the extent that they have an ~~and the~~ impact on the proposed practising fee.”

*Question 2: Are the proposed changes to the evidence requirements clear?*

Broadly yes, although there is an implication in the consultation that the approval process will be more onerous if a fee increase is proposed. We do not understand the rationale for this. Better regulation principles could be interpreted as requiring just as much if not more scrutiny if a practising fee is being reduced – not only might this be an indicator of a regulator doing too little (which could have public protection implications) but it could be evidence of inappropriate pressure from the representative arm of the Approved Regulator to reduce costs – it is important that, once the regulatory Board forms its view of what it must do in a given business year that the Approved Regulator makes such resources available as are reasonably required. Notwithstanding this wider concern, we would recommend a similar amendment to the proposed rule 11(b):

“11(b): where there is a proposed increase in practising fees, the budget should show anticipated income from all sources relevant to the calculation of the fees and its allocation to the permitted purposes for the current application and, where available, the next three years.”

We would be happy to discuss this further.

Yours sincerely



**Ewen Macleod**  
**Director of Regulatory Policy**