



The Bar Council

2023/24 Budget and Practising Certificate Fees (PCF) Proposal December 2022 – Consultation

INTRODUCTION

1. As the Approved Regulator (AR) under the Legal Services Act 2007 (LSA07)¹, the General Council of the Bar (GCB) is obliged to consult the profession about the planned budget for the coming financial year, and the implications for changes to the PCF, before submitting the PCF proposal to the Legal Services Board (LSB) for approval. The budget covers the business plans of both the representative body (the Bar Council [BC]) and the regulatory body (the Bar Standards Board [BSB]).

2. The LSB is obliged by the LSA07 (Section 30) to make ‘Internal Governance Rules’ (IGR)² setting out requirements to be met by approved regulators for the purpose of ensuring that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions. IGR Rule 9 (regulatory resources) states that *‘Each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged.’* Rule 10 (Budget) states that: *‘The regulatory body [the BSB] shall independently ...formulate its own budget in accordance with its priorities and strategy.’* **The Bar Council cannot accept or reject the BSB’s budget but can seek further information** under IGR Rule 3 where it has reasonable grounds to do so, to assure itself that the required resources and budget required are ‘reasonable’. The inclusion of reasonable *‘requires that the resources can be objectively justified as necessary and proportionate’*.³ In *‘seeking to influence the regulatory body the role of the AR is strictly limited to when it is acting in its representative capacity’*.

3. The other set of rules that the GCB, as the AR, has to follow, are the Practising Fee Rules made by the LSB under Section 51 of the LSA07⁴ and the accompanying guidance.⁵

4. The Practising Fee Rules oblige the GCB, as AR, following consultation with the profession, to set out in detail in a PCF submission to the LSB, the planned

¹ <https://www.legislation.gov.uk/ukpga/2007/29/section/51>

² <https://legalservicesboard.org.uk/wp-content/uploads/2019/07/IGR-2019.pdf>

³ <https://legalservicesboard.org.uk/wp-content/uploads/2019/07/IGR-Guidance-July-2019.pdf>

⁴ <http://legalservicesboard.org.uk/our-work/lsb-rules-and-guidance/attachment/pcf-final-rules-2021-accessible>

⁵ <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/Final-PCF-Guidance-2021.pdf>

programme of 'permitted purpose' activity to which the practising fees will be applied. This submission needs to address the criteria of Transparency, Accountability and Proportionality. *'Proportionality. The practising fee should be adequate to effectively discharge the approved regulator's regulatory functions in an efficient and cost-effective manner.'* The AR must give detailed income and expenditure forecasts for three years, from and including the year for which the fee is to be levied, *'where the approved regulator expects a material change in expenditure or income'*. The BC therefore needs to provide sufficient information, not only about its own programme of work but, but that of the BSB too.

5. The proposed budgets for 2023/24 include a substantial increase in expenditure and it will be necessary to increase the levy on the profession. The increases are largely due to the BSB's plan to increase staff 'reward' (salary); the very tight labour market which is driving staff cost inflation; general inflation; and expenditure to improve cyber security. The GCB's budget proposal is detailed below. The section at paragraphs 37-71 has been written by the BSB independently, and only formatted to fit with this paper.

6. The GCB is the sole legal entity and the employer of all GCB staff, including the BSB. As the representative body, the Bar Council recognises that the BSB is failing to meet its own performance targets and is struggling to recruit and retain staff. This is despite a very significant increase in BSB budgeted staff numbers over the last 3 years (by c.40%). As part of their recovery plan, the BSB is incurring significant 'in-year' expenditure on outsourcing elements of casework, although this is a non-recurrent cost. The BSB now intends to increase staff salaries to the 'median' of other regulators, over time, although the cost is front-loaded. We are concerned that the BSB's answer to its capacity issues is limited to more, better paid staff. We have challenged the BSB to provide clear evidence that the root cause of the recruiting and retention problems is pay, as opposed to a combination of other causes, of which pay might well be one. We have also challenged the BSB to conduct a 'root and branch' review of processes and, secondly, to stop doing things that can be better done by others. Unless a fresh approach is taken by the BSB we cannot be assured that the BSB budget is 'reasonable'. In the proposal below we have compromised with the BSB on the budget for this year only. But the increase in budget is driven this year as much by the cost of living and the tight labour market rather than an acceptance of the BSB's future plans.

7. You are urged to consider this consultation and respond as indicated under 'Next Steps' below.

PCF USAGE

8. Total PCF income is split between the BC and the BSB, taking into account the joint liability of the levies from the LSB and Legal Ombudsman (see the detail at para. 30) and the funds kept aside for supporting the reserves in the event of a future pension deficit. The split is variable but is predicted to be 29.5% Bar Council / 70.5% BSB in 2023/24.

9. PCF bands and fees since 2015 are shown below.

Band	Income Band	2015/16 Fees	2016/17 Fees	2017/18 Fees	2018/19 Fees	2019/20 Fees	2020/21 Fees	2021/22 Fees	Band	New Banding	2022/23 Fees
1	£0 - £30,000	£109	£110	£123	£123	£100	£100	£100	1	£0 - £30,00	£100
2	£30,001 - £60,000	£218	£220	£246	£246	£246	£246	£246	2	£30,001 - £60,000	£253
3	£60,001- £90,000	£436	£441	£494	£494	£494	£494	£494	3	£60,001-£90,000	£509
4	£90,001 - £150,000	£794	£803	£899	£899	£899	£899	£899	4	£90,001 - £150,000	£926
5	£150,001 - £240,000	£1,205	£1,219	£1,365	£1,365	£1,365	£1,365	£1,365	5	£150,001-£240,000	£1,406
6	£240,001 - £500,000	£1,633	£1,652	£1,850	£1,850	£1,850	£1,850	£1,850	6	£240,001-£350,000	£1,906
7	£500,001 - £1,000,000					£2,500	£2,500	£2,500	7	£350,001 - £500,000	£2,017
8	£1,000,001 and above					£3,000	£3,000	£3,000	8	£500,001 - £750,000	£2,575
9									9	£750,001 - £1,000,000	£2,725
10									10	£1,000,001 - £1,500,000	£3,090
11									11	£1,500,001 and over	£3,270

PCF INCOME FORECAST AND PROPOSAL FOR 2023/24

10. Our latest projections for PCF show the income for 2023/2024 would be £17.6m based on the current fees, up from £17.2m (actual) this year. The increase is mainly due to new barristers joining the profession and barristers moving up through the income bands (demographic changes). The projected PCF income will be insufficient to cover the projected increase in recurrent operational expenditure of 10%.

11. **If the proposed increase in costs were to be covered solely by increases in the PCF this would translate into an increase in the PCF fees for 2023/24 of 9%.** If this increase in operating expenditure were to be approved by the LSB, we would seek to mitigate the effect on the Bar by using the GCB reserves and the release of part of the funds previously set aside to support the DB Pension deficit to limit the overall increase in PCF to barristers of 5% for the coming year. This will help the GCB deliver a balanced budget. However, the BSB would still run a deficit budget for a number of years with the difference being supplemented by reserves until it achieves a balanced budget. The proposed 5% increase in PCF means the expected PCF gross income for 2023 /24 will rise to £18.5m.

12. In order to deliver a 5% increase in forecast PCF income, we are proposing that there be no change to Band 1 and that the increase for band 7 be 6% to bring the charges for this band into alignment with the other bands. All other bands will increase by 5%.

13. The proposed PCF bands and fees for 2023/24 are:

Income band	Range	Last years PCF fee	New PCF fee	Increase in fee
Band 1	£0 - £30,000	100	£100	£0
Band 2	£30,001 - £60,000	253	£266	£13
Band 3	£60,001-£90,000	509	£534	£25
Band 4	£90,001 - £150,000	926	£972	£46
Band 5	£150,001-£240,000	1,406	£1,476	£70
Band 6	£240,001-£350,000	1,906	£2,001	£95
Band 7	£350,001 - £500,000	2,017	£2,138	£121
Band 8	£500,001 - £750,000	2,575	£2,704	£129
Band 9	£750,001 - £1,000,000	2,725	£2,861	£136
Band 10	£1,000,001 - £1,500,000	3,090	£3,245	£155
Band 11	£1,500,001 and over	3,270	£3,434	£164

14. The PCF increase in the budget table below shows a 9% increase in PCF consisting of a 4% demographic increase (based on budgeted not actual PCF collection) combined with the 5% fee increase.

General Council of The Bar Budget 2023-2024 P&L Version	Bar Council	BSB	Annual Final Budget	Budget	Variance to Budget	Budget Variance (%)
	2023-24	2023-24	2023-2024	2022-23		
	£000's	£000's	£000's	£000's	£000's	£000's
Income						
PCF Income	5,466	13,082	18,549	17,049	1,500	9%
Non-PCF Income	2,574	2,170	4,744	5,058	(314)	6%
Total Income	8,040	15,252	23,293	22,107	1,186	5%
Staff-Related Expenditure						
Staff Costs	3,464	7,036	10,500	9,131	(1,369)	15%
RGP Recharge - Staff Related Costs	663	1,587	2,250	1,956	(295)	15%
Total Staff-Related Expenditure	4,128	8,623	12,750	11,086	(1,664)	15%
Non-Staff Costs						
Non - Staff Costs	1,553	1,987	3,540	3,665	126	3%
Non - Staff Costs -RGP Recharge	1,569	3,754	5,323	4,920	(403)	8%
Total Non-Staff Costs	3,122	5,741	8,862	8,585	(277)	3%
Total Operating Costs	7,249	14,363	21,613	19,671	(1,941)	10%
Non-Operating Expenditure						
DB Pension Fee	192	458	650	1,300	650	50%
LSB/OLC Costs	263	629	892	892	0	0%
Tax on investment income	22	53	75	140	65	46%
Total Non-Operating Expenditure	477	1,140	1,617	2,332	715	31%
Total Expenditure	7,726	15,504	23,230	22,003	(1,226)	6%
Total Surplus/(Deficit) after Adjustments	315	(252)	63	103	(40)	

15. If the GCB did not increase PCF and just used the reserves to cover the increase in recurrent costs this would inevitably lead to a much greater increase in PCF in future years.

16 In 2018 the PCF was increased by 12.5% to raise funds for the DB Pension Deficit recovery plan. This raised an annual sum of £1.3m that was to be ringfenced for the Pension Deficit with the aim that it would lead to lower practising fees when no longer needed. The latest defined benefit pension scheme valuation has moved from a deficit to a surplus and means that the annual £1.3m GCB contribution to the scheme, under the recovery plan, is not required for the next 3 years. The GCB considers that it be prudent to release half of the earmarked money for the DB Pension to limit the PCF increase, with the remainder of the funds being used to either support the reserves in the event of a future pension deficit or speed up the repayment of the CBILS loan.

17 The GCB proposes using the permitted purposes reserve, and the £650k, to mitigate the PCF increase. This will mean that the PCF increase to the profession for 2023/24 will be limited to 5% (individual income bands may differ slightly). This is in line with the 2022/23 increase, when an increase of 9% was mitigated to 4.5% with the expectation of a similar increase in 2023/24.

EXPENDITURE (variance to 2022/23)

18. The proposed increase in operating expenditure for the GCB is £1.941m (a 10% increase on the current year's budget):

	Operating Expenditure Variance to last years budget			
	Bar Council	RGP	BSB	Total
	2023-24	2023-24	2023-24	Total
	£000's	£000's	£000's	£000's
Total Staff Related Expenditure	(381,833)	(294,809)	(987,370)	(1,664,012)
Total Non Staff Expenditure	(37,304)	(402,735)	162,830	(277,209)
Total Operating Expenditure	(419,137)	(697,544)	(824,540)	(1,941,221)
% of Total Operating Expenditure	22%	36%	42%	100%

The main drivers for the proposed increase in costs are explained below:

- Staff costs have increased by £1,664k due to additional staff, out of cycle salary increases, restructuring teams and a projected salary contingency of 7.5%.
- Non-staff costs have increased by £277k, a 3% increase on the 2022/23 budget. The increase in the joint costs of the Resources Group of £402k (due to cybersecurity and cost of living increases) has been masked at the GCB level by the reduction in BSB non-staff costs.

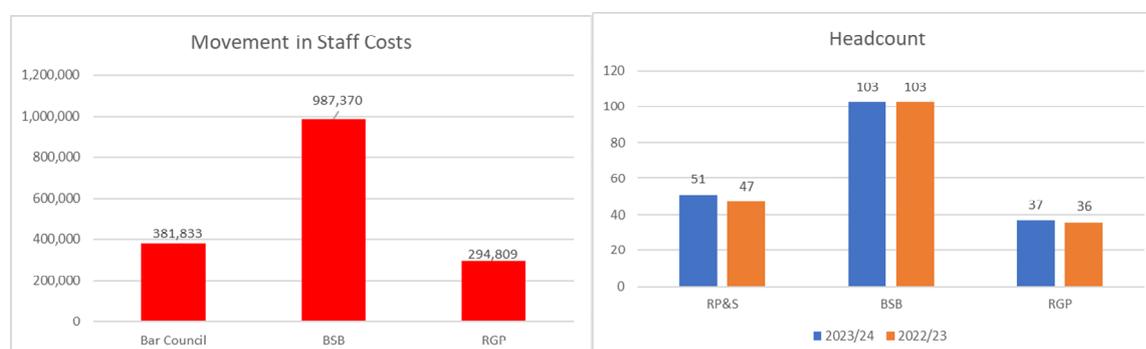
- Non-Operating Costs have decreased by £715k due to the release of £650k previously earmarked for the Pension Deficit Recovery Plan and a reduction in tax on investment income of £65k.

19. The table below compares the proposed budgeted costs to the previous year's budget, by entity and cost type.

Expenditure	22/23	23/24	Change	% Change		
Staff Costs	£000's	£000's	£000's			
Bar Council	3,083	3,464	(382)	12%	↑	cost increase
BSB	6,048	7,036	(987)	16%	↑	
Resources Group	1,956	2,250	(295)	15%	↑	
	<u>11,086</u>	<u>12,750</u>	<u>(1,664)</u>	<u>15%</u>	↑	
Non Staff Costs						
Bar Council	1,516	1,553	(37)	2%	↑	
BSB	2,149	1,987	163	8%	↓	cost saving
Resources Group	4,920	5,323	(403)	8%	↑	
	<u>8,585</u>	<u>8,862</u>	<u>(277)</u>	<u>3%</u>	↑	
Non Operating Expenditure						
DB Pension	1,300	650	650	50%	↑	release of funds
LSB/OLC Costs	892	892	0	0%		
Other Costs	140	75	65	46%	↓	cost saving
	<u>2,332</u>	<u>1,617</u>	<u>715</u>	<u>31%</u>	↓	

STAFF COSTS 2023/24

20. Staff costs will increase by £1.664m. This is a 15% increase on the previous year's budget though some of the increase in this year's figures was included in the previous year's budget approval (see BSB details below). The effect of increasing inflation (currently at 11.1%) and the tight jobs market have been significant drivers in the increase in staff costs. This year there have been no significant changes in the overall headcount.



Bar Council

21 A 12% increase in staff costs of £382k, this includes an amount for anticipated pay increases in 2023/24. The remaining amounts are due to: increased employers'

national insurance and pension contributions; cumulative impact of new hires joining on higher rates and out-of-cycle increases.

BSB

22. Staff costs have increased by £987k (16% increase on the previous year). 12% of the increase (£715k) relates to the full-year effect of changes made and confirmed in last year's budget and PCF approval process. The remaining £271k relates to a five-year phased implementation of reforms of pay and reward. After receiving independent advice the BSB Board has decided these changes are necessary as the BSB is experiencing severe difficulty in recruiting and retaining people with the skills and calibre the organisation needs. Further supporting information on this is shown at section 39 onwards.

Resources Group

23. Staff costs increase by 15% (£295k). This includes a contingency that has been built into salary budgets to cover wage inflation, the remaining amounts are due to recruitment and other staff costs in this area, including the impact of new hires joining on higher rates and out-of-cycle increases, including implementing the recommendations of a post-cyber attack review.

NON-STAFF COSTS 2023/2024

GCB

24. Non-staff costs are expected to increase by £277k (3%). The main area of cost increase has arisen in the Resources Group though these shared cost increases have been mitigated by savings in the BSB (see para. 26).

Bar Council

25. The Bar Council has seen a modest 2% increase in non-staff costs (£37k), mainly driven by a renewed schedule of events and travel post covid.

BSB

26. The BSB has made savings of 8% on non-staff costs (£163k) in the Exams team.

Resources Group

27. Non-Staff costs have increased by 8% (£403k). The main area for non-staff cost increases is the RG driven mainly by cost-of-living increases (heat and light etc) (£165k) and implementing the recommendations of a post-cyber attack review (£391k). Though these costs were mitigated by savings in corporate overheads and a lower depreciation charge.

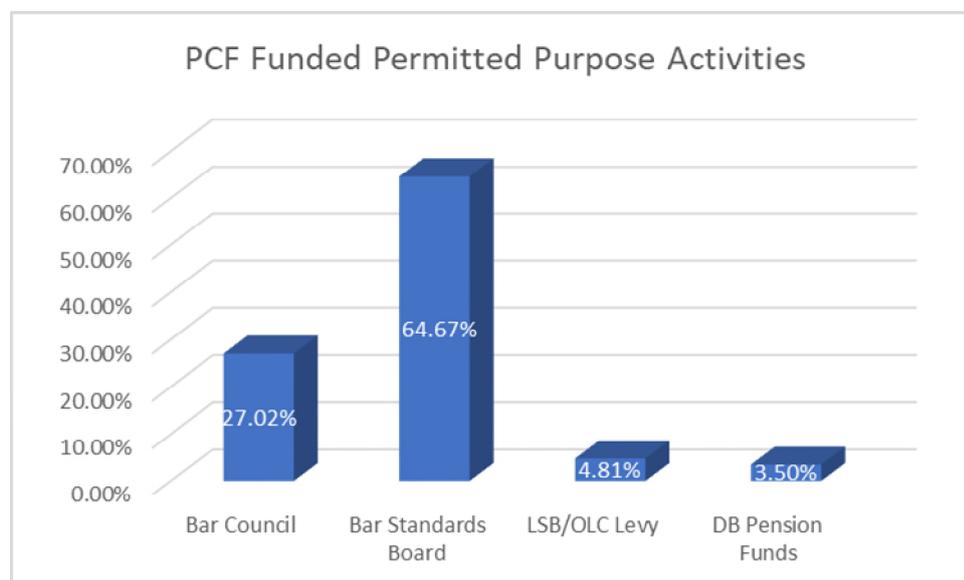
SPLIT OF PCF INCOME

28. The GCB organisational overheads and those of the LSB/OLC levy and the DB Pension scheme are split between the BC and BSB, based on the relative size of each (see below).

£000's	<i>PCF Funded Permitted Purpose Activities</i> £000's	<i>PCF Funded LSB/OLC Levy</i> £000's	<i>Legacy DB Pension Scheme</i> £000's	<i>Total PCF</i> £000's
2022/23 Forecast				
Bar Council	4,604 26.79%	269 1.57%	192 1.12%	5,065 29.47%
Bar Standards Board	11,023 64.13%	642 3.74%	458 2.66%	12,123 70.53%
Total	15,627	911	650	17,188
2023/24 Proposed				
Bar Council	5,012 27.02%	263 1.42%	192 1.04%	5,467 29.47%
Bar Standards Board	11,995 64.67%	629 3.39%	458 2.47%	13,082 70.53%
Total	17,007	892	650	18,549

* Please note %'s are of the Total PCF

29. The graph below also shows the allocation of PCF to Permitted Purposes activities.



Permitted purposes Programme of Activity:

Proportion of activity that is for Permitted Purposes								
Functional Area	Permitted Purposes Gross Cost (£m)	51(4)(a)	51(4)(b)	51(4)(c)	51(4)(e)	51(4)(f)	(Max 100%)	Not in Scope of PP
Levies								
Legal Services Board	0.374		100%				100%	
Legal Ombudsman	0.518		100%				100%	
GCB DB Pension Scheme	0.650	100%					100%	
Bar Standards Board								
Authorisations	1.789	100%					100%	
Supervision	0.918	100%					100%	
CAT	0.745	100%					100%	
Corporate Services/Governance	0.691	100%					100%	
Board	0.280	100%					100%	
Communications	0.269	100%					100%	
Public Engagement	0.115	100%					100%	
Programmes	0.345	100%					100%	
Regulatory Risk	0.150	100%					100%	
Equality & Access to Justice	0.171	100%					100%	
Policy & Research	1.116	100%					100%	
Enforcement	1.577	100%					100%	
Legal Support	0.463	100%					100%	
HR	0.393	100%					100%	
Overheads - Resources Group	5.395	100%					100%	
Bar Council								
Policy Directorate	0.700	100%					100%	
Equality, Diversity & CSR	0.706	90%					90%	10%
EU Law	0.211			40%		60%	100%	
International	0.535					80%	80%	20%
Law Reform, Regulatory & Ethics	0.329	60%		25%	10%	5%	100%	
Remuneration & Legal Practice	0.368	45%		45%		5%	95%	5%
Communications	0.774	15%		30%	15%	15%	75%	25%
Corporate	2.321	45%		15%	15%	15%	90%	10%
Total Gross P&L Expenditure	21.903							

The Bar Council

30. The Bar Council provides a broad range of services to barristers. The PCF supports these activities under a number of the permitted purposes as follows:

Permitted purpose 51a - the regulation, accreditation, education and training of applicable persons

31. A significant proportion of the Bar Council's work is allocated to this permitted purpose. A notable example of our work in this area is diversity and inclusion, in particular promoting equality, diversity and inclusion (including social mobility) in the profession. We provide advice and support, training and guides for individual barristers and their chambers. In addition, specific positive action programmes cover (i) access, (ii) retention and (iii) progression at the Bar. A significant area of work relates to the education, training, and provision of leadership to the profession on the regulatory environment in which barristers and chambers operate, including raising awareness of key regulatory developments. Our work on providing practical advice and support on practice management falls under this permitted purpose, including drafting practice management guidance for the Bar and arranging practice management seminars on both new areas of interest and updates on existing matters (for example, a current priority area is income monitoring and fair work distribution). Similarly, policy work relating to remuneration and legal practice, including issues focused on access to justice and the administration of justice, fall under this permitted purpose. Recent work has also included initiatives in conjunction with the Law Society, to improve the cyber security of barristers, chambers and client data.

32. In addition to the policy work outlined above, our policy work in relation to the Bar's ethical standards and obligations, which includes management and provision of the Ethical Enquiries Service, also falls under this permitted purpose. As well as maintaining an up-to-date online ethics guidance resource (www.barcouncilethics.co.uk), a team of Ethics Advisers respond to some six thousand telephone and email enquiries from barristers each year. The Committee also delivers seminars to support barristers in understanding their ethical obligations, most recently on common ethics issues when practising at the Criminal Bar.

Permitted Purpose 51c - participation in law reform and related legislative process law reform, legal practice and permitted purpose 51e - the promotion of the protection by law of human rights and fundamental freedoms law reform

33. Our work allocated to these permitted purposes covers a broad range of issues including civil, family, and criminal justice and a variety of areas of law. Aspects of our research work are allocated to this permitted purpose so that we may inform the legislative and law reform process from a firm evidence base. We also include a proportion of our European work under this purpose which continues to be of great relevance despite the UK's departure from the European Union.

34. Law reform mainly relates to monitoring and responding to consultations that impact on the administration of justice. This includes working on matters covering a broad range of legislative matters, contributing to the Law Commission's programmes of law reform and raising awareness of current law reform issues through the likes of our annual law reform lecture.

Permitted purpose 51d - the provision of applicable persons of legal services or reserved legal services, immigration advice or immigration services to the public free of charge

35. We support Advocate (formerly the Bar Pro Bono Unit) which provides a vital service to people who would otherwise have no access to justice.

Permitted purpose 51f - promotion of relations between the approved regulator and national or international bodies, governments or the legal professions of other jurisdictions

36. We carry out a wide range of international engagements liaising with national, regional and global level organisations. We also work closely with the legal professions and, as appropriate, governments of other jurisdictions across the world. A key aspect of our work under this permitted purpose is to support and promote the rule of law internationally and the development of the standards of the legal professional at the international level, bearing in mind that these also have an impact on the practice of our own profession.

PRACTISING CERTIFICATE: OVERVIEW OF BSB CONTRIBUTION

Bar Standards Board programme of activity 2023/24 (authored by the BSB)

Overview

37. The proposed Bar Standards Board's budget for 2023/24 reflects the continuation of the BSB's three-year strategy, in its second year. Plans for the next year prioritise meeting its targets for operational decision-making against the background that BSB has experienced challenges in meeting timeliness targets, particularly for the conduct of investigations. This has been caused by a number of factors, such as increased numbers of reports and investigations, the cyber attack in April 2022 and difficulties that have been experienced in filling vacancies (some of which were new roles specifically focused on improving operational capacity.) The BSB is proposing no change in the number of our people compared with the 2022/23 budget. However, as part of the BSB's efforts to address these issues, they have reviewed the BSB's pay and reward offer, to maintain the capabilities needed by the BSB in order to be effective in delivering the regulatory objectives. The Bar Standards Board has dropped by nearly 20% behind the median benchmark for equivalent roles in other regulators, to the point at which they have been experiencing severe difficulty in recruiting and retaining people with the skills and calibre the BSB needs. This, in turn, has detracted from performance.

38. This explanatory note accordingly, sets out:

- i. The case for BSB's proposed reforms of pay and reward to place the setting of pay on a long-term sustainable basis;
- ii. How resources will be allocated across the BSB functions in 2023/24 and how those functions will support the regulatory objectives; and
- iii. How the BSB oversees regulatory performance and evaluates its performance.

BSB reforms of pay & reward

39. The provisional Bar Standards Board's budget for 2023/24, which was approved by the Board at its meeting on 22 September 2022, provides for a 9% increase in operating costs.

40. The movement in these numbers is explained almost entirely by salary costs which increase by 16% from £5.8 million in 2022/23 to £6.7 million in 2023/24. The BSB is proposing no change in the number of its people. The pay and reward changes account for 4% of the 16% increase in staff cost. The remaining 12% of the increase is due to:

- provision for the cost of living (inflation) and other in-year changes of 8% - an increase on the originally-planned 5% and up from 3.5% in 2022/23 – at a cost of £393k;
- the full-year effect of other in-year adjustments and changes made in 2022/23, including a market supplement approved by the Board for legal regulatory roles in the Legal and Enforcement Team;

- the phased implementation of reforms of pay and reward extended to 5 years at an additional cost in 2023/24 of £271k; and
- provision of £75k for people recruitment costs which is allocated pro-rata across departments, and of £15k for Away Days, also allocated pro-rata across departments.

41. The reforms of pay and reward were decided on by the BSB Board in the light of independent advice which shows that pay at the Bar Standards Board now lags by nearly 20% the median benchmark for equivalent roles in other regulators. As a result, the BSB is experiencing severe difficulty in recruiting and retaining people with the skills and of the calibre the organisation needs. This, in turn, is detracting from performance and has, for example, been a significant factor in BSB's struggle to pick up the pace of its investigative work.

42. Recruitment and retention difficulties are now across the board. The voluntary turnover rate has risen to 21% this year – well in excess of many other regulators and above a level compatible with effective operation for a small organisation. The failure rate for external recruitment campaigns is running at 52% this year. It is taking on average, just under 17 weeks to fill roles now compared to 11 weeks a year ago.

43. In the Board's view the BSB does not need to pay top dollar among regulators to attract and retain good people. Although the BSB has now lost the comparative advantage which flexible working arrangements once offered, it still has an attractive proposition to offer its people. The Board does, however, believe that the BSB must take pay off the table as a positive disincentive to joining or staying at the BSB if they are to be effective and judges that, to do so, pay at the BSB should be pitched for the medium-term at around the median for pay for comparable regulatory roles.

44. The reforms approved by the Board achieve that by:

- retaining broadly the current pay bands, but linking those bands to regulatory sector median pay rates;
- providing consolidated (i.e. pensionable) market supplements for regulatory policy and legal roles which the benchmarking analysis shows attract higher salaries at other regulators;
- retaining non-consolidated performance related pay through a refreshed system of recognition awards that award excellence both for delivery and behaviours.

45. Because pay at the BSB has fallen so far behind other regulators, the cost of implementing these reforms is high and, in the interest of affordability, must be phased over a number of years. The Board has agreed that the best balance between affordability and full implementation is struck over five years. Implementation over five years requires an additional £271k in the first year and total additional expenditure of just over £1 million over five years.

46. Implementation of the pay review proposals will yield savings in recruitment costs and in temporary and consultancy support. BSB's current budgetary process is to fund those costs from the savings on salary from vacant posts, rather than to allocate a separate budget. In the previous financial year BSB spent £99k on recruitment and more than £50k on temporary staff and in the four months of the current year to date the BSB has spent £28k on recruitment and more than £37k on temporary staff. In that 16-month period they have also spent £61k on outsourced casework, a small proportion of that necessary due to conflicts of interest but the majority due to issues of capacity.

Allocation of resources across BSB functions

47. The Bar Standards Board's strategy includes a commitment to the following priorities:

- **Efficiency:** delivering its core regulatory operations quickly, economically and to a high standard. The Board's top priority is to improve performance in core regulatory operations;
- **Standards:** ensuring that barristers provide a high quality and responsive service throughout their careers;
- **Equality:** promoting equality, diversity and inclusion at the Bar and at the BSB, and the profession's ability to serve diverse consumers;
- **Access:** promoting consumer understanding of legal services and choice, and good value in using those services; and
- **Independence:** strengthening the BSB's independence, capability, self-confidence and credibility.

48. These objectives and capabilities are being taken forward through the BSB's functions and associated budgetary provision as follows.

How the BSB functions support the regulatory objectives and strategic priorities

Supervision (10% of budget)

49. The Supervision function has responsibility for the BSB's risk-based regulation of chambers, employers, BSB authorised entities, individual barristers and authorised training providers. It includes supervision of activities such as pupillage, the transparency rules, equality and diversity compliance, anti-money laundering and bullying and harassment. In doing so, its supervision work protects consumers and promotes the diversity, independence and quality of the profession.

50. The BSB's Supervision work is central to the development of its strategic priorities. The relationships the BSB has with its regulated communities through its proactive supervision provides evidence to support innovation and the use of technology by barristers and helps target regulation where it is needed. It enables the BSB to understand how work is allocated within chambers, how standards of practice are maintained and how governance and decision making within chambers are undertaken. All of this feeds into the BSB's plans for greater focus on the role of chambers, which will be driven by the evidence gathered through the BSB's regulatory return and through the continuing relationship management of chambers and entities. The impact of any new regulation will be assessed through, amongst other things, spot checking and thematic supervision reviews.

Authorisations (20% of budget)

51. The BSB's Authorisations Team is responsible for the authorisation of Bar and Pupillage Training Providers, for the management of the Bar Training centralised assessments and for assessing applications for waivers and exemptions from Bar training and practising requirements.

52. The budget allocated to the BSB's authorisation functions will ensure the timely, high quality and consistent assessment of authorisation decisions in line with its published service standards. In doing so it gives consumers and others confidence in the service the BSB provides and confidence that barristers are subject to rigorous assessment before entering the profession. The authorisation of chambers and entities as providers of pupillage training, as well as the development of new pathways for entry to the profession such as

apprenticeships, helps ensure a good supply of new entrants to the profession and encourages diversity.

Contact and Assessment (8% of budget)

53. The Contact and Assessment function is responsible for assessing reports about the conduct of barristers and for taking initial decisions on whether the report identifies a potential breach of the BSB Handbook that requires further investigation. So the function promotes adherence to the professional principles and protects consumers.

54. The budget for Contact & Assessment is set to ensure that reports about barristers are handled in line with the BSB's published service standards and that we take high quality and consistent decisions. Information from reports is a valuable source of evidence to support our policy development and to evaluate the impact of the BSB's regulation. It will be particularly useful as the BSB develops its relationship with chambers and will contribute to its assessment of compliance with requirements around equality, diversity and inclusion.

Enforcement (17% of budget)

55. This function includes the full range of the BSB's enforcement work from investigation through to disciplinary action and any associated work such as appeals, interim suspension and fitness to practise cases. Accordingly, the function protects the public interest, the rule of law and the interests of consumers, while also contributing to a strong and diverse profession and to upholding the professional principles.

Legal Support (5% of budget)

56. This function includes legal support and legal knowledge management across the full range of the BSB's regulatory decision-making functions, including litigation arising from such decisions. Accordingly, the function supports all or most of the regulatory objectives and the strategic priorities but makes a particular contribution to the efficient and effective conduct of regulatory operations.

Regulatory Risk (2% of budget)

57. The Regulatory Risk function identifies risks to the regulatory objectives and works with the Board and Senior Management Team to prioritise them. This forms the basis of the BSB's strategic priorities as an organisation. The function also monitors the available evidence in relation to developments in the market and the BSB's response, managing its Risk Framework and regularly reporting to the Board. This ensures that the BSB is regularly evaluating any new evidence and reviewing its priorities. As such, the BSB's regulatory risk work takes account of all of the regulatory objectives, and by working with the Board to establish a risk appetite and relative priority, guides how the BSB promotes the regulatory objectives. Its work also applies across all strategic themes and contributes risk expertise to policy projects that are established in response to the risks that have been identified (approximately 20% of activity is project-focused.)

Equality and Access to Justice (2% of budget)

58. The Equality and Access to Justice function promotes equal access to, and diversity within, the profession, working in partnership with stakeholders. It also promotes the interests of diverse and vulnerable consumers across the work of the BSB. It reports to the BSB's Equality and Access to Justice Programme Board and commissions research, undertakes consultation and stakeholder engagement, conducts training and assists with embedding good practice in equality impact assessment across the organisation to ensure that equality

and diversity issues are properly taken into account. As such the function contributes to encouraging an independent, strong, diverse and effective legal profession and to improving access to justice by considering the needs of a diverse range of consumers and working with the profession and others to eliminate barriers to access.

59. In taking forward the BSB's strategy, the function will promote best practice in chambers' oversight of diversity by working with chambers and others in the profession. It will also contribute to improving access to justice by ensuring that new barristers joining the profession are drawn from diverse backgrounds to reflect the society they serve and by working to understand and minimise the barriers to progression for certain groups. And the function supports other projects across the organisation to ensure that equality, diversity and inclusion issues are at the heart of the BSB's work. Approximately 40% of activity is project-related.

Policy and Research (12% of budget)

60. The Policy and Research function draws on evidence of risk to the regulatory objectives to identify projects and programmes that will address those risks and evaluates the impact of those projects. Specifically:

- by reviewing the BSB's Code of Conduct and related regulatory arrangements, the function promotes all regulatory objectives, but particularly: the public interest; the rule of law; the interests of consumers; and the professional principles;
- by developing rules on transparency and working with the other regulators on a range of projects relating to innovation and technology, digital comparisons and unbundling, the function promotes in particular: competition; the interests of consumers; and access to justice;
- by working with colleagues on the Assuring Competence Programme, the function particularly promotes the interests of consumers and the professional principles;
- by undertaking research and evaluation focusing on the needs of consumers, it promotes the interests of consumers; and
- by focusing research and evaluation activities on other risks in the market, it promotes all regulatory objectives to differing degrees.

61. The function will contribute to the strategic priorities by:

- providing consumers with confidence in using the services of barristers: by monitoring the BSB's disciplinary process and the impact of its training reforms. And by incorporating consumer feedback into the BSB's projects to reform regulatory arrangements, and evaluating their impact;
- maintaining and improving access to justice: by researching barriers to entry and progression in the profession and evaluating the impact of regulatory interventions; understanding the needs of consumers through commissioned research; working to promote transparency and competition in collaboration with the other regulators and other stakeholders; and improving the BSB's understanding of how consumers choose barristers (especially via a solicitor.)
- enabling the benefits and mitigating the risks of innovation and technology: by working with the other regulators to understand innovations in the market and remove regulatory barriers; piloting new approaches to unbundling and online comparisons; providing waivers or relaxing regulation where necessary to facilitate innovation and remove barriers; and understand how the BSB's regulation needs to evolve.

Communication and public engagement (3% of budget)

62. The CPE function supports all other BSB teams in the pursuit of the BSB's regulatory objectives. It publishes information about BSB's work, including its strategy and business plan, and promotes that work through a programme of prioritised engagement with key stakeholders involving both Board and executive team members. The function leads, in particular, on actions to improve engagement with consumers and organisations representing consumers.

Public Legal Education PLE (2% of budget)

63. The PLE function meets the BSB's regulatory objective of "increasing public understanding of citizens' legal rights and duties" and is pursued through the publishing of materials on the BSB's own website and via the Press and in partnership with other regulators and with charities supporting those in legal need.

64. PLE comes under the strategic priority of "maintaining and improving access to justice" and involves both ensuring that individuals and small businesses, and the organisations advising them, have a good understanding of the services barristers can provide and working with other regulators and frontline advice providers to ensure that the public have a better understanding of their legal rights and duties, the legal services market and how to access legal advice.

People (4% of budget)

65. The People function leads work to define a culture and values for the Bar Standards Board appropriate to an independent regulator and to put in place the policies for the recruitment, remuneration, retention and development of its people which will sustain BSB's self-confidence and ability to deliver.

Governance and corporate services (11% of budget)

66. This function ensures that governance in the Bar Standards Board reflects best practice, including adherence, where appropriate, to the UK Corporate Governance Code. The function plays a key role in setting, and overseeing, standards for the quality of Board papers and for streamlining governance documents.

Programmes (4% of budget)

67. The Programmes function sets standards for the delivery of the programmes and projects which represent the BSB's principal means of delivering strategic interventions. The function also promotes the development of project management skills across the BSB and supports the delivery of individual programmes and their constituent projects.

Regulatory performance

68. The BSB must comply with regulatory performance standards set by its oversight regulator, the Legal Services Board. A new performance framework comes into force in January 2023 and the BSB expects this to continue to influence its priorities over the next few years. As noted above, improving performance is a key priority for the BSB over the next year, and this will be overseen by a new Performance and Strategic Planning Committee and by the Board itself. A number of the Bar Standards Board's reforms of governance have been as a result of the LSB's performance standards. They are owned by the Board and coordinated as part of a central programme. Responsibility for specific actions within that programme are shared across a range of functions as the BSB continues to implement the action plan agreed with the LSB. Major contributions are made by:

- the Board which owns and oversees the plan;
- the DG and Governance and Corporate Services function which oversees the streamlining of BSB's corporate governance documents and sets standards for Board papers;
- the People function which is taking forward the development of a culture, values and supporting policies appropriate to an independent regulator; and
- the Communication and Public Engagement function which is responsible for reforms to the BSB's engagement with consumers.

Assessing and evaluating benefits

69. The Bar Standards Board assesses the benefits of regulatory interventions primarily through its well-developed analysis of regulatory risks (see the Risk function above) which draws on evidence from a range of sources, including: BSB's Regulatory Return; the reports received by BSB; intelligence provided by the Legal Ombudsman and Bar Mutual Insurance; feedback from stakeholders, including the Judiciary; and the BSB's own programmes of research and data gathering. The BSB then tests its assessment of risks and opportunities by consulting stakeholders, particularly stakeholders representing consumers.

70. The majority of strategic interventions are taken forward within a programme or project framework and governed by a programme or Project Initiation document which defines the benefits sought from the intervention in terms of the regulatory objectives and sets out, and manages, the associated risks to the realisation of those objectives.

71. The BSB then evaluates the impact of these interventions by commissioning research or analysing relevant data. For example, the BSB has recently undertaken research into the impact of the transparency rules on both consumers and on chambers. The BSB also has research underway into the impact of its reforms of Bar training. The data the BSB publishes annually on diversity of the Bar and incomes at the Bar provides a basis for assessing the impact of its interventions aimed at promoting diversity and inclusion.

INCOME (REGULATORY AND NON-REGULATORY)

	22/23	23/24	Change	% Change	
Total Income	£000's	£000's	£000's		
PCF Income	17,049	18,549	1,500	9%	
Non PCF Income	<u>5,058</u>	<u>4,744</u>	<u>(314)</u>	<u>6%</u>	
	22,107	23,293	1,186	5%	Increased income

72 Total income is forecast to be £23.3m. This represents a 5% increase on the amount budgeted in 2022/23 of £22.1m.

Changes in Non-PCF income:

	22/23	23/24	Change	% Change	
Non PCF Income	£000's	£000's	£000's		
Bar Council	2,700	2,574	(126)	5%	
BSB	<u>2,358</u>	<u>2,170</u>	<u>(188)</u>	<u>8%</u>	
	5,058	4,744	(314)	6%	decreased income

Bar Council Non PCF Income	22/23	23/24	Change	% Change	
	£000's	£000's	£000's		
Bar Council	2,466	2,419	(47)	2%	
Resources Group Income	234	155	(79)	34%	
Total Bar Council Income	2,700	2,574	(126)	5%	decreased income
BSB Non PCF Income	22/23	23/24	Change	% Change	
	£000's	£000's	£000's		
BSB (Regulatory Income)	1,798	1,798	0	0%	
Resources Group Income	560	372	(188)	34%	
Total Bar Council Income	2,358	2,170	(188)	8%	decreased income

- Bar Council - BRF income is expected to remain steady with a small decrease (£50k) in Services income largely due to the decision to not run the Annual Bar and Young Bar Conference in 2023/24.
- BSB - Regulatory income is expected to remain steady.
- Resources Group - the investment income has been reduced by £267k and is recharged £78k to Bar Council, and £188k to BSB.

NEXT STEPS

73. We welcome views from the profession on the planned budget for 2023/24 and the proposal to increase PCF and invite you to consider the questions below. Please send your responses to: treasurer@barcouncil.org.uk

74. The consultation will close on 13 January 2023 at 17:00.

Consultation Questions

A. Do you agree with the GCB's proposal to increase the 2023/24 PCF as detailed in this paper? If not please explain why.

B. Do you think the PCF for 2023/24 represents value for money?

C. Are you adversely impacted by the level of the practising fee due to a protected characteristic under the Equality Act 2010 (such as age, disability or gender) or due to your individual practising arrangements? If so, please tell us why and how we could meet your needs. Do you agree with our initial Equality Impact Analysis (EIA) of the practising fee, which we have provided with this consultation?

D. Do you have any other comments regarding PCF or the General Council of the Bar budget for 2023/24?

Malcolm Cree CBE
Chief Executive, General Council of the Bar

Annexes

1. Equality Impact Analysis

Annex 1

EQUALITY IMPACT ANALYSIS



REGULATING BARRISTERS

EQUALITY IMPACT ANALYSIS (EQIA)

Date of Assessment	<ul style="list-style-type: none"> 01/11/22 																																																																
Assessor Name & Job Title	<ul style="list-style-type: none"> Richard Cullen (Director of Finance) / Sam Mercer (Head of Policy: E&D and CSR). 																																																																
Name of Policy/Function to be Assessed	<ul style="list-style-type: none"> PCF 2023-24 																																																																
Aim/Purpose of Policy	<p>1. This year there will be an increase to the annual PCF. In order to deliver a 5% increase in forecast PCF income. We are proposing that that there be no change to band 1 and that the increase be limited to 5% across the remaining bands (except for band 7 where the increase will be 6% to bring it into greater alignment with the other income bands).</p> <table border="1"> <thead> <tr> <th>Income band</th> <th>Range</th> <th>Last years PCF fee</th> <th>New PCF fee</th> <th>Increase in fee</th> </tr> </thead> <tbody> <tr> <td>Band 1</td> <td>£0 - £30,000</td> <td>100</td> <td>£100</td> <td>£0</td> </tr> <tr> <td>Band 2</td> <td>£30,001 - £60,000</td> <td>253</td> <td>£266</td> <td>£13</td> </tr> <tr> <td>Band 3</td> <td>£60,001-£90,000</td> <td>509</td> <td>£534</td> <td>£25</td> </tr> <tr> <td>Band 4</td> <td>£90,001 - £150,000</td> <td>926</td> <td>£972</td> <td>£46</td> </tr> <tr> <td>Band 5</td> <td>£150,001-£240,000</td> <td>1,406</td> <td>£1,476</td> <td>£70</td> </tr> <tr> <td>Band 6</td> <td>£240,001-£350,000</td> <td>1,906</td> <td>£2,001</td> <td>£95</td> </tr> <tr> <td>Band 7</td> <td>£350,001 - £500,000</td> <td>2,017</td> <td>£2,138</td> <td>£121</td> </tr> <tr> <td>Band 8</td> <td>£500,001 - £750,000</td> <td>2,575</td> <td>£2,704</td> <td>£129</td> </tr> <tr> <td>Band 9</td> <td>£750,001 - £1,000,000</td> <td>2,725</td> <td>£2,861</td> <td>£136</td> </tr> <tr> <td>Band 10</td> <td>£1,000,001 - £1,500,000</td> <td>3,090</td> <td>£3,245</td> <td>£155</td> </tr> <tr> <td>Band 11</td> <td>£1,500,001 and over</td> <td>3,270</td> <td>£3,434</td> <td>£164</td> </tr> </tbody> </table> <ul style="list-style-type: none"> The PCF is charged annually as part of the Authorisation to Practice process. On an annual basis barristers confirm they are fit to practise and pay an annual practising fee (PCF) 					Income band	Range	Last years PCF fee	New PCF fee	Increase in fee	Band 1	£0 - £30,000	100	£100	£0	Band 2	£30,001 - £60,000	253	£266	£13	Band 3	£60,001-£90,000	509	£534	£25	Band 4	£90,001 - £150,000	926	£972	£46	Band 5	£150,001-£240,000	1,406	£1,476	£70	Band 6	£240,001-£350,000	1,906	£2,001	£95	Band 7	£350,001 - £500,000	2,017	£2,138	£121	Band 8	£500,001 - £750,000	2,575	£2,704	£129	Band 9	£750,001 - £1,000,000	2,725	£2,861	£136	Band 10	£1,000,001 - £1,500,000	3,090	£3,245	£155	Band 11	£1,500,001 and over	3,270	£3,434	£164
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	<ul style="list-style-type: none"> • <i>The fee provides the necessary funds for permitted purposes provided by the regulatory body (BSB) and the representative body (Bar Council)</i> • <i>It benefits the legal profession and society as a whole to have an appropriately funded regulator and representative body ensuring standards are improved and maintained and the benefits and needs of the profession are articulated to the wider society.</i> • <i>The intention is that barristers pay an annual fee based on ability to pay.</i>
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1. Evidence

<p>What evidence will you use to assess impact on equality?</p>	
	<ul style="list-style-type: none"> • <i>We have completed an in-depth analysis of barristers with protected characteristics across the different income bands.</i> • <i>There will be no increase for Band 1. It will remain at £100. Band 1 contains people newly joining the profession and those returning from maternity / paternity. Band 1 contains those earning from £0 to £30k. This band contains the highest proportion of women, ethnic minorities, disabled and the highest proportion of those aged 25-34 years old</i> • <i>Bands 7 will see a 6% increase in PCF. £350,001k-£500,000k. This is to bring the band into alignment with the other income bands.</i> • <i>All other bands (excepting bands 1 and 7) will have a 5% increase.</i> • <i>Those barristers that pay the most- in the higher income bands are predominantly: male, white, non disabled and greater than 45 years in age.</i>

2. Impact on Equality

<p>Consider whether the evidence listed above shows the potential for differential impact, either adverse or positive, for different groups. If there are negative impacts, explain how you will attempt to mitigate these. Mitigating actions can be described in more detail in your Action Plan (Section 4).</p>	
	<ul style="list-style-type: none"> • <i>All groups will be able to access the PCF in the normal way. Will people from all groups be able to access the service; will there be any barriers for certain groups?</i> • <i>Policy based on ability to pay and should not discriminate unlawfully or provide any indirect discrimination.</i> • <i>The changes shield those in income band 1 (income less than £30k) from any change in the PCF fee.</i>
Race	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i> • <i>Band 1 – no change – has the highest proportion of barristers from an ethnic minority background</i>

Gender	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i> • <i>Band 1 – no change – has the highest proportion of women</i>
Disability	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i> • <i>Band 1 – no change – has the highest proportion of barristers with a disability</i>
Age	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i> • <i>Band 1 – no change – has the highest proportion of young barristers [<25, 25-34]</i>
Sexual Orientation	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i>
Religion/Belief	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i>
Gender Reassignment	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i>
Pregnancy/ Maternity	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area.</i>
Marriage and Civil Partnership	<ul style="list-style-type: none"> • <i>Not applicable</i>
Other Identified Groups	<ul style="list-style-type: none"> • <i>As there is no significant change to the policy of PCF based on ability to pay there is not expected to be any negative impact in this area</i>

How does the policy advance equality of opportunity?
<i>The policy further promotes payment of the PCF based on ability to pay</i>

How does the policy promote good relations between different groups?
--

It is generally thought that those who earn more (and have benefited from a well regulated profession) should bear a greater burden for supporting the profession than those who earn less or are at the start of their careers.

3. Summary of Analysis

<i>Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)</i>		
<i>No change to the policy (no impacts identified)</i>	<i>Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.</i>	X
<i>Continue the policy (impacts identified)</i>	<i>Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.</i>	
<i>Adjust the policy and continue</i>	<i>Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.</i>	
<i>Stop and remove the policy</i>	<i>There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.</i>	
<i>Reason for decision:</i>		
<i>It is not anticipated that there will be any negative effects from these changes to PCF. An analysis of the data post AtP will be undertaken to assess the validity of this assumption.</i>		

Action Plan for Improvement

<i>Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.</i>			
<i>Action Required</i>	<i>Desired Outcome</i>	<i>Person Responsible</i>	<i>Timescale</i>
<i>Analysis of the AtP results for impact on equality</i>	<i>Evidence to support the assumptions</i>	<i>Paul Martyn / Richard Cullen</i>	<i>Post AtP end of April 2023</i>