



Bar Council Budget and Proposals for the Practising Certificate Fee for 2011/12

Response from BACFI

Introduction

The Bar Association for Commerce, Finance and Industry was founded in 1965 to promote the interests and professional status of barristers employed in commerce, finance and industry. BACFI is a Specialist Bar Association, affiliated to the Bar Council but operating independently to represent employed barristers practising outside chambers.

BACFI is keen to play its part as a representative organisation in helping shape the development of the Bar of England and Wales, by bringing forward the views of its members and pressing for appropriate change. BACFI actively supports the principle of "One Bar", whilst recognising that there are differences in practising arrangements and the working environment of barristers employed in the private sector.

General comment on consultation process

As far as we know, apart from the entry on the website, there was no general communication to members of the Bar about this consultation. Many members of the Bar do not consult the website on a regular basis. Some of our colleagues received an e-mail but it was not clear to whom this had been sent. Furthermore the e-mail was sent out on 26 August during the holiday period and immediately before a Bank Holiday which is not the best timing for an important communication. We would also have expected that the General Management committee would have been told that this consultation was to appear on the website.

In addition, there is no reference in the paper to the results of the earlier PCF consultation. If this present proposal is to have credibility it surely must reflect or at least refer to the results of that exercise.

Budget

Whilst we are not in a position to comment in any detail on the budget, there are some observations we like to make:

Given the extra cost to members of the levies, we feel that some consideration should be given to reducing overheads. Most other organisations have a culture of

cost control at all levels and the Bar should play its part. While we appreciate that there has been no inflationary increase in the overall budget, we note that the BSB's expenditure increased by almost 25% between 2007 and 2009 and a further increase of 17% is predicted in 2010 over 2009. In this time of recession, we suggest that ways of cutting overheads should be examined.

The Budget and PCF proposals

As stated in our Response (attached as an Appendix) to the earlier PCF consultation dated 18 April 2010 and subject to the points we made in that response, in principle we support equalisation of the PCF as between employed barristers and self-employed barristers in the spirit of "One Bar" and for the further advancement of that concept.

In the light of Budget and Practising Certificate Fee Proposal of August 2010, we make the following further comments:

1. In connection with the conclusions of the FAC that employed barristers represent a similar regulatory risk to the self-employed, there is one important difference. For the employed barrister the employer will be responsible for any failings on behalf of their barrister employees and in many cases the employer rather than the BSB will impose any discipline.
2. All employed barristers will pay more than at present with the most significant increase being in the 0-4 years category (fee more than quadrupled) and 5-12 years called category (more than tripled for 5-7, and doubled for 8-12). Whilst many employers will pay the PCF on behalf of their employees, there are those who do not. For those barristers who have to pay the PCF themselves and even for some employers these increases may cause them to consider whether the barrister really needs a practising certificate. There are many employed barristers who do not carry out reserved activities and do not use the title in connection with their work. We would advocate that the increases should have been weighted more to the senior barristers. In the 13 year plus category, self-employed barristers will see their fee reduce whilst employed barristers will only see a modest increase. These senior barristers may be more able to persuade their employers to pay a greater increase and an additional band of £750 would not seem unreasonable, allowing a lower fee for the more junior.
3. We note the concession for low paid. However, there cannot be many employed barristers in the private sector (other than those working for charities and other voluntary organisations or working part-time) earning less than £30,000. We suggest that this should be equalised with the self-employed bar at £40,000. There seems no reason to have a differential as the PCF itself is being equalised. We do not agree that the low paid concession compensates for the impact on the 5-12 years category.
4. One other option which could be considered to cushion the effect of increases would be to phase equalisation over 2 or 3 years.
5. The SEB will obtain a financial advantage in being able to pay their PCF in two instalments. We appreciate that the 15 month period has to be accounted for but we have members who find it difficult to pay the fee in one instalment. As employed barristers are being asked to pay the same PCF they too should have an option to pay in instalments.

6. We do not agree that the pension levy should be imposed for 2011 until the information promised at the Bar AGM in June has been received and the Bar Council members have had an opportunity to analyse and discuss it.

Until such time as the undertakings made at the AGM in relation to the pension fund are fulfilled, we reserve our position generally on this Budget and PCF Proposal.

Finally, if employed barristers are to make the same contribution to the budget as the self-employed bar, we would expect equal recognition in terms of representation on BSB working groups and BC committees and more consideration than in the past of the requirements of the employed bar.

We are of course happy to discuss our views on the PCF with the Bar Council and to assist with information on the private sector of the employed bar.

BACFI

23 September 2010

Appendix

The response of the Bar Association for Commerce Finance & Industry (BACFI) to the Practising Certificate Fee Consultation (April 2010)

We do not propose to answer all the questions raised in the consultation.

We make two general points. Firstly, we believe that our members represent a lesser regulatory burden for the BSB than the self-employed bar. Secondly, we believe that the employed bar, despite constituting about 20% of the barristers with practising certificates, is still not equally represented by the Bar Council in its work. We do however acknowledge that representation is a separate matter and the PCF funds the regulatory activities of the BSB not the representational work of the Bar Council.

Notwithstanding the two general points made above and whilst continuing to press for improvement in representation and recognition, we support equalisation of the PCF as between employed barristers and self-employed barristers in the spirit of "One Bar" and for the further advancement of that concept. A phased approach for any increase would be desirable. We have received comments from members that this year's increase was not forewarned and therefore difficult to budget for.

As regards methodology, BACFI members would support either a status quo retaining the current banding system, a year of call computation or a flat fee. A computation by practice area or by means testing appears to be particularly difficult and potentially more expensive to administer without necessarily being more equitable. We believe that some discount or relief for junior barristers and low earners is equitable. We do not believe that any elements of the PCF should be separated out and raised on a different basis. The simpler the methodology the better, as there is no methodology which is equitable to all practitioners.

We make three further comments. In relation to process, the initial consultation period of one month was too short especially as it fell during the Easter period. The last minute extension was of no assistance and only confirmed that the consultation period was too short.

Secondly, the BC and the BSB could save a lot of money if they communicated selectively (by declared area of interest/practice and by e-mail). There should also be more opportunity for practitioners to comment on how the money is spent.

Finally, although representational income is not included in this paper, the MSF income could be increased if voting rights were restored to barristers without practising certificates (a rapidly increasing constituency) and if member services provided services of real value such as help in securing legal advice for members on, for example, employment issues.

BACFI
18 April 2010