

20th June 2013

Dear Colleague,

Practising Certificate Fee Consultation

You will have received by now the latest consultation from the Bar Council on the model for (and likely amount of) the PCF in future years. This follows the broader consultation last year, which was inconclusive on any particular new model but carried a significant majority in favour of change from the existing model, in which bands of fee are based on seniority within the profession alone.

The existing model was producing too many anomalies to be regarded as a fair model. Young practitioners at the commercial and chancery bars were earning sums in their 3rd year of practice onwards significantly in excess of what most senior practitioners at the publicly funded bar were earning. Those who had taken a career break and come back to work part time were treated, for PCF purposes, as if they had never had a break and were working full time.

Research carried out by the Bar Council, using anonymised statistics from BMIF, showed, to everyone's surprise, that 50% of the self-employed bar earns less than £100,000 p.a. gross; and 64% earns less than £120,000.

An earlier draft of a new model produced by a working group of the Finance Committee of the Bar Council ("Model D") was essentially an income tax with a minimum fee of £200, capped at earnings of £480,000 at which the fee payable would have been £2,750 (and someone earning half that would have paid half that rate of fee). Model D resulted in an effective subsidy of the 64% of the profession earning less than £120,000, who would pay £330 or less for their practising certificate. The average rate required to be paid by the self-employed Bar to raise the necessary income would be about £700. Model D was plainly flawed and unjust, and required disclosure of income in brackets right up to £480,000. The model would have been favourable to a significant majority of practitioners whose incomes were in that 64% of practitioners, and so would be likely to have commanded majority support.

In order to deal with the unfairness of Model D, the Chancery Bar Association, with the support of Combar, TecBar and LCLCBA, took the initiative of formulating a better income-related model ("Model E"), which is now before you. The model was fine-tuned with the assistance of the Treasurer of the Bar Council and the statistical information available. It is income related, but not an income tax. It will not require disclosure of amount of income above the £240,000 top tier. It does not involve any element of subsidy to anyone earning over £90,000 gross a year. The top tier, £240,000 and above, equates approximately to the top 17% of the self-employed bar in terms of earnings.

Within Model E there will inevitably be some significant increases in PCF, and these will be most marked in the case of more junior practitioners who are earning at a very high level for their seniority. Some increases for higher earners are unavoidable if any income-related model is to be used. There is a strong tide of support across the profession for an income-related model. We are satisfied that Model E is a fair and reasonable model if an income model is to be used. The principled arguments in favour of a flat rate PCF are well understood but received little support in the first consultation and would receive little support at the Bar Council. There is no realistic prospect of a flat rate fee being adopted, in my opinion.

Model E commands broad support from all constituencies represented on the General Management Committee of the Bar Council, even those who would have done significantly better if Model D had been approved. I would therefore encourage you to support it, notwithstanding the higher fees that it will entail for almost all of us. However, the decision whether or not to do so is entirely yours: the consultation paper presents the alternative of keeping essentially the existing model, but with seniority in terms of years of call replaced by number of years in practice.

I am sorry that you are being asked to respond to yet another consultation but this is an important matter on which the views of practising members of the Bar need to be heard. Do please respond to the consultation if you can find the time to do so. And please feel free to e-mail me if there are particular issues you wish to raise.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Fancourt', with a stylized flourish at the end.

Tim Fancourt QC