



Approval of 2020 Practising Certificate Fee (PCF) application made by the Chartered Institute of Legal Executives (CILEx) and CILEx Regulation to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

1. The LSB has approved an application made by CILEx and CILEx Regulation to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. CILEx is an approved regulator and CILEx Regulation is the regulatory arm to which CILEx has delegated its regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)¹. The Rules² set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application³.
5. This notice sets out the decision taken, including an assessment of the PCF application.

¹ https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF

² Ibid, Rules 10 and 11.

³ https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF

Overview of PCF application and decision

6. The CILEx Regulation PCF application submitted to the LSB provides that practising certificate fees are unchanged for 2020. Entity fees payable by each firm continue to be variable, based upon turnover and how client money is held⁴ and there is no change to the fees in each band. The proposed 2020 fee rates are as follows:

PCF	CILEx Fellow	£364	£364
PCF	Associate Prosecutor	£271	£271
Practice Rights top up	CILEx Fellow with additional practice rights (per right)	£60	£60
Practice Rights top up	Other CILEx members with additional practice rights (per right)	£60	£60
Advocacy rights	CILEx Fellows with additional rights of audience	£150 (at first renewal and then once every 3 years)	£150 (every 3 years)
PCF	Non-member with practice rights	£450	£450
Entity application/renewal	Entity	Variable as fee scale	Variable as fee scale

7. The CILEx Group's total income for 2020 is projected to be £12,998,025. The Group's projected total PCF income for 2020 is £2,409,766, an increase of 0.6% compared to 2019. This is due to a small increase in the number of authorised persons. Of the total projected PCF income, it is expected that £2,367,156 will be collected from PCF charged to Fellows (the most significant segment of its regulated community) and £42,610 will be collected from PCF charged to Associate Prosecutors⁵.
8. The LSB's decision is to approve in full the levels of the PCF for 2020 set out in CILEx Regulation's application.

LSB assessment

Development of the overall budget and application

Evidence that the regulatory arm has led the development of the application

⁴ Client money can be held in a client account or approved escrow.

⁵ The PCF for Associated Prosecutors is paid by the Crown Prosecution Service.

9. The application has been submitted jointly by CILEx and CILEx Regulation, which are part of the CILEx Group. CILEx Regulation sets its budget independently and resource requirements are determined by the CILEx Regulation Board. The CILEx Regulation budget was considered at the February 2019 Board meeting, it was then incorporated into the CILEx Group's draft budget.

Clarity and transparency of overall budget setting

10. The draft budget 2020 for CILEx Group is provided to the LSB. It provides a breakdown of income and expenditure by regulatory-related activity, permitted purposes activity and other activities that are not regulatory or permitted purposes activity. Any variance between the figures for 2019 and 2020 is set out.
11. The application explains that total net regulatory and permitted purposes expenditure is expected to increase marginally in 2020 by £13,238. Total income from PCF is projected to increase by £14,203 as a result of a small increase in authorised persons. However, there is an increase in the costs of CILEx Regulation of £147,297 and an increase in regulatory costs of £18,500 made up of a levy payable to OPBAS and a small increase in the LSB and Office for Legal Complaints (OLC) levies. This increase has been largely offset by a reduction in CILEx permitted purposes expenditure of £152,559.
12. The effect of the change is that the CILEx Regulation permitted purposes proportion of an individual PCF for a Fellow, will increase from £197 to £219 and the CILEx permitted purposes proportion will decrease from £147 to £123. This is reflected in the table below.

<u>CILEx Fellow PCF breakdown</u>	<u>2019</u>	<u>2020</u>
CILEx Regulation	£197	£219
CILEx	£147	£123
Levies	£20	£22
Total CILEx Fellow PCF	£364	£364

13. The LSB considers that the application provides a reasonable level of information on the development and setting of the overall budget.

Evidence that immediate and medium term needs have been taken into account

14. The application notes that CILEx Group had a surplus before tax in 2018 of £842,955 and this was greater than the surplus in 2017 of £641,981. CILEx Regulation made an operating surplus before tax in 2018 of £161,095 as a result of continuing improvement in financial performance, which resulted in reserves of £132,897 being carried forward into 2019. CILEx Group's financial position, combined with replenished reserves has enabled the Group to make strategic investments. CILEx Group is currently undergoing an IT project to replace its current CRM system and the new system was due to be implemented in August 2019. The CILEx Group is expecting to make small net surpluses in 2019 and 2020.

Contingency fund arrangements

15. The CILEx Group's Reserves Policy was updated in September 2018 and provides that a minimum of eight months' operating costs will be held for both CILEx and CILEx Regulation along with an additional strategic reserve.
16. As at the end of 2018, CILEx Group held £8.7 million in cash and investment reserves (3.6 times the level of PCF income in the 2020 budget). CILEx Regulation is confident that resources are available should they be required and states in its application that the changes to the reserves policy has not impacted CILEx Regulation's position regarding access to reasonable resources.
17. We note that access to CILEx Group's reserves is currently through approval of the CILEx Group Board. We understand that CILEx and CILEx Regulation are reviewing these arrangements as they consider the steps they will need to take in order to comply with the LSB's new Internal Governance Rules (IGR)⁶. Of particular relevance is Rule 10 of the IGR which provides that regulatory bodies shall independently formulate their own budgets and allocation of resources.
18. The application states that PCF income does not contribute to CILEx Group reserves. However, the application also mentions that CILEx Regulation had an operating surplus of £132,897 in 2018 which, on further questioning, CILEx Regulation confirmed was carried forward as reserves. This is will be used to fund the expected deficit for 2019 and 2020 which will arise because of additional costs which have been identified during the budget cycle. CILEx Regulation has confirmed that it has accumulated reserves from prior financial years, so would be able to fund additional requirements before needing to make a reasonable request for resource from CILEx.
19. The LSB notes that there appear to be two reserves; one held by CILEx Group to which CILEx Regulation has access (subject to approval) that does not contain funds derived from the PCF; and another that CILEx Regulation is able to hold as a result of operating surpluses that can then be spent on permitted purposes activities, without the requirement to obtain approval from the CILEx Group. The LSB considers that future PCF applications would benefit from a clearer articulation on the different types and purpose of reserves held within the CILEx Group.

Consultation on PCF

Summary

20. CILEx Regulation consulted on the proposed PCF between 17 May 2019 and 19 June 2019. CILEx Regulation explains that the proposal to maintain PCF rates at their current levels was approved by the CILEx Finance Committee and the CILEx Regulation Board in July 2019.

⁶ <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/07/IGR-2019.pdf>

21. There were separate consultations for the different types of regulated members, Fellows, Fellows with advocacy rights, Practitioners and Entities. It has confirmed that the relevant consultations were emailed directly to all Fellows, Practitioners and entities. CILEx Regulation consulted with the Crown Prosecution Service (CPS) which funds Associate Prosecutors' PCF rather than directly consulting individual Associate Prosecutors. The LSB was provided with copies of this correspondence as part of the application.
22. CILEx Regulation provided the LSB with a copy of the consultation papers directed at CILEx Fellows and summary of the responses as part of its application. The 2020 PCF consultation does not appear on CILEx's website.
23. Although we welcome CILEx Regulation's efforts to consult its regulated community despite their being no increase in the level of PCF. Consultations such as this offer a clear opportunity to engage with the regulated community on the costs, benefits and future direction of regulation and are an important part of promoting the regulatory objectives. In addition for future PCF applications, in the interests of transparency, we will expect CILEx to publish the PCF consultation on its website.

Consultation responses

24. The consultation directed at the 7343 Fellows received 648 responses which equated to a response rate of approximately 8.8%. As part of this consultation, respondents were asked to reply with "yes"/"no" to whether the 2020 PCF for CILEx Fellows should be held at £364. Respondents who answered "no" were invited to provide comments alongside their response.
25. Of the 648 respondents, 621 (96%) supported the proposal to keep the 2020 PCF for CILEx Fellows at £364 and 27 (4%) disagreed with the proposal. A total of 33 comments were provided. The majority of the comments (87%) were centred around the current PCF being too high and that it should be reduced. Some respondents made additional comments in relation to the PCF being too high. These were:
 - Six respondents compared the PCF to the SRA PCF for this year
 - Five noted the lack of marketing of Fellows and the lack of membership benefits
 - Four considered that costs were excessive given they are self-funded
 - Three said that costs should be brought under control to reduce the PCF
 - One respondent thought the PCF could be increased
26. One respondent commented that the PCF should be increased but did not give reasons.
27. The application notes that the responses from Fellows, whose numbers account for the most significant segment of CILEx Regulation's regulated community, was overwhelmingly supportive.

28. While we note that the number of Fellows that considered that the level of PCF was too high, was low in comparison to the number that supported the proposal, the application could have benefited from a brief summary of how CILEx Regulation considered the different views and its reasons for considering that the PCF should not be reduced.
29. The consultation directed at the 179 Fellows with practice rights received 16 responses. The application notes that there was a technical issue with the survey which meant that comments were unavailable. We asked CILEx Regulation to explain further and it confirmed that not only the comments were lost but the yes/no answers were also lost. CILEx Regulation explained that it sent the consultation again but only received 2 responses, both of which were supportive of the proposal to hold the PCF at the current level.
30. The consultation directed at entities received three responses. All three respondents supported holding the PCF at current levels. No additional comments were provided.
31. For future PCF applications, we will expect CILEx Regulation to consider a more detailed explanation of how consultation responses were considered and whether the feedback resulted in changes and if not, the reasons for their decision. Consultations should facilitate scrutiny and allow stakeholders to provide input. We would expect CILEx Regulation to demonstrate that it has given proper consideration to issues and themes raised through consultation.

Permitted purposes

Allocation to permitted purposes

32. CILEx Regulation has stated in its application that all PCF income is used to undertake permitted purposes within the scope of section 51(4)(a) of the Act, which relates to the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons.
33. The application further provides an overview of the permitted purpose activities undertaken by CILEx which includes an analysis of the permitted purposes work, as a percentage of its work overall. The percentages are based on an assessment of the CILEx Management team of the amount of departmental time spent on all permitted purposes activities or in providing services to CILEx Regulation under a service level agreement.
34. The Group budget sets out that the Group will spend £2,783,931 on permitted purposes. Of this, CILEx Regulation will spend £1,977,907 and CILEx will spend £806,024.

LSB targeted review

35. In our 2019/20 Business Plan⁷ we set out our intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.
36. The targeted review is due to begin in 2020. We look forward to working with CILEx Regulation to enhance our understanding of its current approach.

Transparency of PCF information to fee paying members

Clarity of information provided

37. The proposed PCF for 2020 was shared as part of the consultation. Following LSB approval, letters will be sent to all PCF paying members which set out the proportion of the PCF allocated to CILEx and to CILEx Regulation. During the course of the application CILEx Regulation has confirmed that the letter will include detail on the level of PCF, how it has been set, and a breakdown of allocation of PCF to the different the permitted purposes as set out in section 51(4) of the Act.

Regulatory and Equality Impact assessment

38. CILEx Regulation's application provides comments on how it has had due regard to equalities issues and has taken into account the better regulation principles.
39. CILEx Regulation has also explained that, along with CILEx, it is currently developing a new action plan to ensure it continues to promote equality against the nine protected characteristics set out in the Equalities Act 2010⁸. Once the action plan has been developed, we expect it to be shared with the LSB.
40. It is noted that CILEx Regulation has not completed a full regulatory and/or equality impact assessment on the basis it does not consider it to be necessary or proportionate. The Rules set out that regard should be given to regulatory and equality and diversity impact assessments. While our Guidance confirms that such assessments are not needed in every case, this application has not provided adequate explanation of why they have not been provided. Increasingly, we place particular importance on equality and diversity impact assessments as a means of driving legal service regulators to more closely link PCF levels to our shared regulatory objectives, one of which is to encourage an independent, strong, diverse and effective legal profession. Therefore, we would expect CILEx Regulation to

⁷ https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf

⁸ The nine protected characteristics are: age, gender, disability, gender reassignment, marriage and civil partnership, maternity and pregnancy, race, religion or belief, sex and sexual orientation.

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undertake a more meaningful assessment to support its application next year, or to provide further explanation as to why such assessment is not considered necessary.

Decision

41. The LSB has approved the PCF application submitted by CILEx Regulation for 2019/20 under section 51 of the Act.

Summary of expectations for next application

- CILEx Regulation to provide a clearer articulation of the different types and purpose of reserves held (paragraph 19).
- CILEx Regulation/CILEx to publish its consultation on its website and provide a more detailed explanation of how consultation responses were considered (paragraph 23 and 31).
- CILEx Regulation/CILEx to either undertake a more meaningful regulatory and equality impact assessment or explain fully why they consider one is not necessary even if there is no PCF increase (paragraph 40)

Matthew Hill, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

10 October 2019