18 November 2019

Approval of 2020 Practising Certificate Fee (PCF) application made by the Institute of Chartered Accountants in England and Wales (ICAEW) 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 the ICAEW 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.

4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)[1]. The Rules[2] 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 (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application[3].

5. This notice sets out the decision taken, including an assessment of the PCF application.

Overview of PCF application and decision

6. As explained in our 2017 decision letter the ICAEW probate fee is a "practising fee" within section 51 of the Act since payment is a condition which must be satisfied for the regulated person to be authorised by the approved regulator. Consequently, the probate fee is referred to as a PCF throughout this decision.

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[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

7. The ICAEW PCF application for the approval of practising fees for 2020 sets out a proposal for a 1% increase in the probate fee or firm fee for ICAEW annual registration.

8. The application states that the increase in PCF reflects:
    - wage and general inflation in the delivery costs for the ICAEW
    - an increase in delivery activities such as visits/reviews.

9. The increase in PCF is expected to result in a PCF income of £484,000 for 2020. This is an increase of £9,000 when compared to the forecast for 2019.

10. The LSB's decision is to approve in full the levels of the 2020 PCF as set out in the ICAEW application.

LSB assessment

<u>Development of the overall budget and application</u>

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

11. The ICAEW application confirms that the probate budget is prepared by its Professional Standards regulatory arm. It also confirms that the budget is not impacted by the representative arm.

12. We are therefore satisfied from the information provided in the application that the regulatory body has led the development of the budget and application.

Clarity and transparency of overall budget setting

13. The LSB is satisfied with the budget setting process outlined in the application. The application states that the probate budget is set as part of a detailed process which includes a regularly updated 18-month rolling forecast. The application also outlines that operational needs are considered on a month by month forecast basis. Presently a relatively static number of registrations is expected in line with the past 18 months.

14. The ICAEW budget for 2020 was set using the previous year's expenditure as a guide. The application indicates that income is expected to increase by around £9,000 and expenditure will increase by the same amount leaving a small surplus of £15,000.

15. As part of the application, ICAEW confirmed that its forecast for 2021 and 2022 was only for inflationary increases in both income and costs.

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

16. As set out above ICAEW explained in its application that projections for longer term cost variations are minor and largely relate to wage and general cost inflation. As a relatively new regulator of legal services ICAEW is still building data that will assist in

its projections related to forecasting additional income which may come from regulatory penalties and fines.

17. For future applications we expect ICAEW to provide additional information on its strategic priorities in the medium term and any associated costs of pursuing its strategy.

Reserves arrangements

18. The application confirms that ICAEW's probate reserves are held as a component of ICAEW Ltd Company Reserves. It further explains that the operational reserves do not impact the fee proposal.

19. The reserves policy articulated in ICAEW's financial statements for 2018 confirms that reserves should be set at a level equivalent to between 3 and 6 months expenditure. Currently the reserves exceed that level but are set out for the whole of ICAEW's operation and not merely for the legal services regulatory function.

20. It is clear from the financial statements excerpt provided in its application that ICAEW holds sufficient reserves. However, we consider that a delineation of reserves relating to ICAEW's Probate arm from the wider ICAEW reserves would assist for future applications.

<u>Consultation on PCF</u>

Summary

21. With its July 2019 newsletter, ICAEW issued a five-week consultation on the proposed PCF increase. The consultation was promoted to the regulated community by email.

22. The consultation closed on 31 August 2019 and received 7 responses. The consultation asked whether respondents agreed with the proposed 2020 PCF increase and whether it would impact them. We consider that by posing just two questions to its regulated community ICAEW could have missed a useful opportunity to communicate with the profession on the benefits and purpose of regulation. ICAEW may be able to enhance the engagement of the profession by asking additional questions through PCF consultations in the future. ICAEW should consider this prior to future PCF applications in the interest of receiving a greater amount of feedback on its fee proposals.

Consultation responses and consideration of responses

23. The application states that overall the respondents to the consultation were in support of the fee increase with 4 of the 7 respondents stating they agreed with the proposed change.

24. 5 of the 7 respondents confirmed the increase would have an impact on their firms. The reasons given included:

- a view that the fee should be based upon the number of licensed practitioners not the number of partners
- a view that any increase in this relatively new area risks the viability of expanding into new service provisions.

25. ICAEW considered the consultation responses and is of the view that a 1% increase is appropriate in the circumstances.

26. During our engagement with ICAEW we noted the low response rate to its consultation. ICAEW considered the low response rate was because the increase proposed is so minor.

27. The current low level of response may indicate that the profession is not properly engaged and could represent a missed opportunity to communicate with the profession on the benefits and purpose of regulation. For future PCF applications, we will expect ICAEW to continue to build on its efforts to promote awareness of the consultation and to consider other possible avenues for engaging with the profession on the fee proposals in the interest of receiving a greater amount of feedback.

Permitted purposes

Allocation to permitted purposes

28. All PCF income received by ICAEW is used to undertake permitted purposes. The application outlines a high-level breakdown of the estimated proportion of expenditure allocated to each permitted purpose activity. As a result, aside from levies, all PCF income generated by ICAEW covers:
    - supervision & quality assurance
    - research and legal costs
    - committee costs
    - compensation scheme and insurance
    - policy
    - governance and administration

LSB targeted review

29. In our 2019/20 Business Plan[4] we set out an 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.

30. Work on this targeted review has recently started. We look forward to working with the ICAEW to enhance our understanding of its current approach.

Transparency of PCF information to fee paying members

Clarity of information provided

[4] https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf

31. ICAEW intends to publish its fee scales online and will also write to the regulated community setting out the forthcoming year's PCF.

32. ICAEW must ensure that its communication includes all the minimum requirements set out in the LSB's rules and guidance. This must include an accurate presentation and representation of the LSB and Office for Legal Complaints levies.

33. We consider it important that regulators promote discussion of the costs and benefits of regulation as a means of accountability. Regulators' communication of the PCF to fee paying members is a good opportunity to promote such discussion. We intend to return to this point in our forthcoming review of the PCF framework.

Regulatory and Equality Impact assessment

34. The application sets out that the regulated community were given the opportunity to comment on impact through consultation. A formal regulatory and equality impact assessment has not been carried out as part of the ICAEW application.

35. The LSB's rules for PCF applications set out that regard should be given to regulatory and equality & diversity impact assessments. We place particular importance on equality and diversity impact assessments as a means of driving consideration of relevant issues by the regulators we oversee and expect ICAEW to undertake a more meaningful assessment to support its next application, or to provide a more detailed explanation as to why such assessment is not deemed necessary.

Decision

36. The LSB has approved the PCF application submitted by ICAEW for 2020 under section 51 of the Act.

Summary of expectations for next application

- ICAEW to provide additional information on its strategic priorities in the medium term and any associated costs of pursuing its strategy. (Paragraph 17)
- ICAEW to provide the LSB with a clear delineation of reserves relating to ICAEW's Probate arm from the wider ICAEW reserves (Paragraph 20)
- ICAEW to consider asking additional questions through PCF consultations in the future in the interest of receiving a greater amount of feedback on its fee proposals. (Paragraph 22)
- ICAEW to build on its efforts to promote awareness of the consultation and to consider other possible avenues for engaging with the profession on the fee proposals in the interest of receiving a greater amount of feedback (Paragraph 27)
- ICAEW to provide either full impact assessments or an explanation of why such assessments were not considered appropriate (Paragraph 35)

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
18 November 2019