14 February 2020

# Approval of 2020 Practising Certificate Fee (PCF) application made by the Association of Chartered Certified Accountants (ACCA) 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 ACCA 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. The ACCA PCF application for the approval of practising fees for 2020 sets out a proposal for maintaining the PCF required to obtain a Firm's Legal Activities Certificate (FLAC) at £250.

7. The PCF is expected to result in a PCF income of £13,560 for 2020. This is a decrease of £1,880 when compared to the forecast for 2019.

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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

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

9. The LSB approved ACCA's PCF application in 2018, to charge £250 for each of the two years 2018 and 2019. However, ACCA has explained in its current application that due to an oversight it charged an inflationary uplift on the approved PCF in 2019 which it had only very recently discovered and brought to the LSB's attention. In addition, ACCA has informed the LSB that it had omitted to submit a PCF application for LSB approval prior to charging the 2020 PCF and is now seeking approval for this. The PCF charged in 2020 also included an inflationary uplift on the £250 amount, but ACCA are only proposing to seek approval for the £250. ACCA has confirmed that it has reimbursed the firms and individuals for the uplift to the PCF charged in 2019 and 2020.

10. The LSB considers that these omissions are a significant failing on ACCA's part. However, we acknowledge that ACCA self-reported this omission as soon as the discovery was made and has taken immediate steps to remedy this.

**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 ACCA application confirms that the probate budget is developed alongside ACCA's strategic and financial plans, considering past and immediate needs. The budget is planned to cover a three-year period reflecting the resources required by ACCA in regulating probate since its entry to the market in April 2018.

12. ACCA's intention is for the regulation of probate activity to be self-financing. However, the low number of authorised practitioners has meant that its wider business has needed to subsidise the income derived from PCF throughout the period it has been regulating probate practitioners.

13. We are satisfied from the information provided in the application that the regulatory function of ACCA has led the development of the budget and application.

*Clarity and transparency of overall budget setting*

14. 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 process that runs alongside ACCA's wider strategic and financial plans and covers a three-year period. The application also outlines that the budget reflects the actual demand for legal activities authorisation.

15. The ACCA budget for 2020 was set taking into account PCF income based upon the number of authorised persons, fixed costs of the probate course, regulatory board meetings, regulatory levies payable to the LSB and Office for Legal Complaints and

departmental overheads such as staff training. It also takes account of variable costs including the costs of authorisation, regulatory oversight and member communication. The application indicates that PCF income for the three years to 2020 is expected to total £33,000 which is significantly below expectation as a result of the low number of authorised individuals.

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

16. ACCA has experienced a deficit of £94,405 since it started to regulate probate activities. This is set against an initial expectation for a deficit of £3,440 over the first five years of regulation. As a result of the higher than expected deficit ACCA has absorbed the deficit into its wider business.

17. ACCA accepts that it cannot self-finance with its current number of authorised individuals and has not taken the decision to increase the PCF at this time. The cost of regulating probate will continue to exceed income in the medium term but is provided for by the wider ACCA business.

*Reserves arrangements*

18. The application confirms that ACCA is satisfied it has sufficient financial resources to meet its core regulatory functions.

19. During our consideration of the application we asked for further detail on ACCA's reserves arrangements and for detail on how the legal regulatory arm of ACCA would access reserves.

20. ACCA confirmed that total funds and reserves amounted to £23,977,000 as at 31 March 2019. ACCA further confirmed that it has robust governance arrangements that allow its regulatory functions to operate at arm's length from its representative functions. Access to funds is provided through ACCA's budget process.

21. It is clear from the information provided that ACCA holds sufficient reserves. It is also clear that in practice the regulatory function of ACCA has been able to access funds to subsidise it, as it is not generating sufficient income from PCF to self-finance at this time.

<u>Consultation on PCF</u>

*Summary*

22. ACCA's application confirms that it made the decision not to consult on the basis there was no PCF increase proposed.

23. In future applications we expect ACCA to consult on its proposals in relation to PCF and to seek meaningful engagement with its regulated community on the PCF it charges and the reason for the level it is set at. Should ACCA make the decision not to consult we expect a detailed explanation for choosing this approach.

Permitted purposes

*Allocation to permitted purposes*

24. All PCF income received by ACCA 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 ACCA covers:
    - regulation
    - education
    - training

25. ACCA explained that variable costs in handling complaints and monitoring reserved legal activities are not included as these activities have not yet commenced.

26. ACCA also explained that not all expenses are covered by the PCF and as a result some of the above activities are in-fact funded through a budget subsidy from ACCA's membership subscriptions, general (non-legal services) PCF and examination entry fees.

27. We expect future PCF applications from ACCA to detail monitoring activities undertaken in 2020. We are concerned that ACCA has indicated that monitoring of reserved legal activities has not commenced despite the fact ACCA has been an active approved regulator since April 2018.

*LSB targeted review*

28. 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.

29. Work on this targeted review is underway. We look forward to working with the ACCA to enhance our understanding of its current approach.

Transparency of PCF information to fee paying members

*Clarity of information provided*

30. ACCA has confirmed that it provides information on the PCF on its website and that further information on fees is including the in the guidance factsheets and renewal forms.

31. ACCA must ensure that in the future its communications about PCF include 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.

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

32. 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 targeted review of the PCF approval process.

Regulatory and Equality Impact assessment

33. A formal regulatory and equality impact assessment has not been carried out as part of the ACCA's application.

34. The LSB's rules for PCF applications set out that regard should be given to regulatory and equality impact assessments. We place particular importance on equality impact assessments as a means of driving consideration of relevant issues by the regulators we oversee and expect ACCA 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 considered to be necessary. Further, lack of meaningful consideration and information provided on equality issues to the LSB, impacts on our obligation to comply with our public sector equality duty under the Equality Act 2010.

**Decision**

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

**Summary of expectations for next application**

- ACCA to consult on its proposals in relation to PCF and to seek meaningful engagement with its regulated community. Should ACCA make the decision not to consult we expect a detailed explanation for choosing this approach (Paragraph 23)
- ACCA to detail monitoring activities undertaken in 2020 (Paragraph 27)
- ACCA to ensure that in the future its communications about PCF include all the minimum requirements set out in the LSB's rules and guidance (Paragraph 31)
- ACCA to provide either equality and impact assessments or an explanation of why such assessments were not considered appropriate (Paragraph 34)

**Matthew Hill, Chief Executive**
**Acting under delegated authority granted by the Board of the Legal Services Board**
**14 February 2020**