PROFORMA FOR PRACTISING FEE APPLICATIONS FOR APPROVAL BY THE LSB UNDER SECTION 51 OF THE LEGAL SERVICES ACT 2007

Preamble

Purpose

1. The information in this proforma should be provided by approved regulators when submitting each practising certificate fee (PCF) application to the Legal Services Board (LSB) for approval under section 51 of the Legal Services Act 2007 (the Act). Section 51(2) of the Act limits the application of amounts raised by PCFs to one or more of the permitted purposes set out in section 51(4).

2. The Practising Fee Rules 2016[1] (Rules) restate the permitted purposes in section 51(4), set out the criteria against which the LSB will decide on applications submitted to it for approval and identify the evidence required to satisfy that criteria. The LSB Guidance to Approved Regulators on PCF applications (Guidance) provides more detailed guidance on the criteria and evidence.

3. Approved regulators should consider the Rules and Guidance when completing this proforma. In case of conflict, between the Rules, Guidance and the Act, the provisions of the Act prevail.

4. This proforma reflects the Rules and Guidance and does not impose new information requirements. Section I sets out the overview and summary information, and II to VI the specific categories of information (with references to the relevant Rules) that approved regulators must provide when submitting a PCF application, to enable the LSB to assess the application, as applicable. Sections VII to VIII allow for the submission of supporting materials and the provision of contact details, respectively.

5. The proforma is intended to ensure all PCF applications are consistent and contain the necessary level of detail, transparency and clarity in compliance with the Rules. The aim is to ensure the PCF application process is more transparent, consistent and less resource intensive for approved regulators and the LSB.

[1] Section 51(3) of the Act requires the LSB to make rules specifying the permitted purposes.

6. The text of section 51 of the Act together with the Rules and Guidance can be found on the LSB's webpages.

7. The approved regulator submitting the proforma takes responsibility for the accuracy and completeness of the information.

8. As set out in the Guidance[2], we would encourage approved regulators to engage in early pre-application discussions with the LSB to discuss any issues arising before the application is submitted.

Confidential or commercially sensitive information

9. If any information submitted as part of the PCF application is considered by the approved regulator to be confidential or commercially sensitive, please indicate this and provide reasons.

[2] Paragraph 18 of the Guidance.

PROFORMA

I. Summary and overview

- Please briefly summarise the proposal and state whether the proposal is for an increase, decrease or no change to the PCF relative to the previous year.
- Please state how the current application addresses the matters (if applicable) raised in the LSB's decision letter approving the previous year's PCF application.
- If any pre-application discussion was held with the LSB prior to the submission of this application, please set out what (if any) issues were identified by the LSB and how this application addresses them.

Statement of application

1.1 ACCA is an approved regulator (**AR**) in respect of probate activities under the Legal Services Act 2007 (**the Act**) and its regulatory arrangements for probate activities were approved by the Legal Services Board (**LSB**) under Part 3 of Schedule 4 to the Act on 18 January 2018.

1.2 ACCA applied to introduce Practising Certificate Fees (**PCF**) for legal activities in 2018. The LSB approved ACCA's application under section 51 of the Act for the level of the PCF for the calendar years 2018 and 2019 on 8 March 2018.

1.3 ACCA hereby applies for approval of the level of PCF for the calendar year 2020. Our application is made in accordance with section 51 of the Act, which enables the LSB to approve PCF levels in accordance with the LSB's Practising Certificate Rules 2016 (**the Rules**).

Legal activities authorisation fee for 2020

1.4 ACCA proposes to extend the current level of PCF for firms applying for, or renewing, a Firm's Legal Activities Certificate (**FLAC**) to the calendar year 2020. The FLAC authorises the firm to undertake non-contentious probate activities, effective for the calendar year in which the firm is authorised. As a result, there is no change to the PCF relative to the previous two years.

1.5 ACCA has considered the matters raised in the LSB's decision letter for the PCF 2018/2019. However, we believe that the three key comments on (i) inclusion of central overheads, (ii) methodology for calculating fees, and (iii) consultation on fee increases are not applicable to this application.

1.6 ACCA held discussions about the level of PCF with the LSB in late December 2019. We set out our intention to extend the current PCF to 2020 in a letter to the Director, Regulation and Policy on 9 January 2020.

II. Developing the overall budget and application

A. The budget statements and figures and a description of how the overall budget was developed and settled, in particular

- a breakdown and clear description of the budget setting process and how the budget was arrived at, including consultation with the regulatory and representative arms
- evidence that the immediate and medium term needs have been taken into account, ensuring it has been developed in accordance with business/strategic plans

A description of contingency/reserves arrangements. This must include:

- assurance that reserves are set at an adequate level for the upcoming budget
- assurance that the impact of high level reserves (if appropriate) have been considered when setting the fee levels.

Fees basis

2.1 ACCA members pay a fee on admission to membership and an annual subscription, regardless of whether they hold an ACCA practising certificate (**PC**). The subscription for a calendar year is set annually, and any increase in excess of 5% requires the members' approval in general meeting (in accordance with the bye-laws). Separate fees are levied for PCs and for certificates and other authorisations for specific regulated activities (eg audit, investment business activities).

2.2 An authorised individual is not be permitted to provide probate services unless their firm holds a FLAC. Therefore, the PCF is not charged to authorised individuals directly. Instead, firms awarded a FLAC are required to pay a fee based on the number of authorised individuals (ACCA members and non ACCA members) responsible for probate work within the firm. The fee is first payable when the firm applies to ACCA for a FLAC, and is then payable annually on renewal of the authorisation.

Legal activities authorisation fee levels

2.3 ACCA is proposing to extend the current PCF to the calendar year 2020. The fee level for 2020 will be **£250** per authorised individual (ACCA members and non ACCA members).

2.4 The approved fee level for 2018 and 2019 was £250 per authorised individual (ACCA members and non ACCA members).

2.5 The 2020 PCF of £250 per authorised individual (ACCA members and non ACCA members) will apply to new FLAC applications in 2020[3], and individuals and firms renewing their existing legal activities authorisation from 1 January 2020.

2.6 The full legal activities authorisation fee is charged in a calendar year. ACCA does not apportion fees for initial applications made during the course of the year. However, from October each year, individuals and firms applying for legal activities authorisation are authorised to 31 December of the following year and are required to pay the following year's legal activities authorisation fee.

2.7 The legal activities authorisation fee is determined by ACCA through collaboration at senior levels within ACCA, having obtained the necessary assurances from those who lead ACCA's regulatory functions that the proposed fees are reasonable and fair. Changes in the legal activities authorisation fee are largely dependent on the costs of regulation in respect of reserved legal activities and the number of authorised persons within ACCA firms.

2.8 Unfortunately, an oversight resulted in an inflationary uplift in the fees for 2019 and 2020 which were not agreed with the LSB. It was not our intent to collect fees without prior approval and ACCA has agreed proposals with the LSB to address this and ensure the PCF is approved in accordance with the Rules.

Setting the budget

2.9 ACCA's qualifications, ethical standards, licensing procedures, monitoring, investigation and disciplinary processes are key to reassuring the public and regulators of the high standards expected of ACCA members. ACCA's financial commitment to the costs of regulation is a measure of the seriousness with which it approaches its responsibilities. Due to its financial strength, ACCA is able to implement necessary regulatory and disciplinary procedures, and to respond to changing demands, while paying due regard to the regulatory principle of proportionality.

2.10 Recognising that the robustness of its regulatory procedures enhances the reputation of accountants and elevates the ACCA brand, ACCA aims to balance its costs and revenues across the organisation. Therefore, the costs of regulation have always exceeded regulatory income (in the form of fees for authorisations, and fines and costs ordered). Further details of how our financial resources are deployed in the various areas of regulation (by activity) can be found in ACCA's Regulatory plan 2019/20.

2.11 In our previous application for the PCF 2018/2019, we adopted a self-financing approach to legal activities regulation. The legal activities authorisation fee of £250 for 2018 and 2019 was set at a level where income from authorisation fees would cover the estimated costs of ACCA's regulatory activities (insofar as these could be separately identified and reasonably estimated at the time) over a five-year period. Our

[3] The 2020 fee applies to initial applications received from 1 October 2019.

estimate of costs was modest and acknowledged the challenges of forecasting the demand for legal activities authorisation as well as the resources needed to deliver the various regulatory functions.

2.12 The income and expenditure budget for probate which forms part of this application has been developed alongside ACCA's existing strategic and financial plans and takes account of past and immediate needs, insofar as these are known. The budget covers a three-year period to 2020 and reflects the actual demand for legal activities authorisation and the resources we have applied to regulating probate since the launch of probate authorisation in April 2018.

Contingency and reserves

2.13 ACCA is satisfied that it has sufficient financial resources to meet its core regulatory functions and is financially capable of fulfilling the requirements for regulating probate activities. Needless to say, ACCA, as with other regulators, faces budgetary constraints and choices when allocating its resources. We continue to invest in a range of initiatives that will deliver sustainable growth, and have sufficient reserves to ensure that unexpected expenditure can be met. Further information concerning ACCA's financial resources is contained in our integrated report and consolidated financial statements for 2019 which are available on ACCA's website at http://www.accaglobal.com/uk/en/about-us/annual-reports.html.

2.14 ACCA has robust financial planning and review procedures. ACCA's Council is responsible for monitoring the organisation's performance in relation to its strategic plan and annual budget. It delegates aspects of these functions to Committees, which operate under its overall guidance and report to it. The Audit Committee is responsible for ensuring that a system of internal control is maintained. Financial and non-financial performance is reviewed regularly against target.

B. A breakdown of the budget for PCF

Total PCF income collected in the current and budget year and a breakdown of how it was allocated or spent:

- by department or expenditure category
- an explanation of any variation in total PCF spending between the current and budget year
- a comparison of PCF for approval in the budget year, with level of PCF in the current year and explanation of why the fee level has changed (if applicable)

In addition, if the proposal is to **increase the PCF relative to the current year,**

- include a forecast budget for the current application and for the next three years (where available)
- an estimate of the PCF for the next three years (where available)

- anticipated income from all sources (including non-PCF income) and its allocation to permitted purposes for the current application and where available, for the next three years (see section IV, below)
- explain the reserves policy and rationale/requirement for any high level reserves

Budget figures

2.15 The budgeted income and expenditure for probate is contained in Appendix 1. A supporting analysis of the budget is set out below.

Number of authorised individuals

2.16 There are currently 44 firms holding a FLAC and 56 individuals authorised for probate by ACCA. There are no initial applications in progress. Our regulated community is a very small proportion of ACCA's overall membership. The probate firms are predominantly sole practitioners and small practices. A register of ACCA accredited probate firms is available on ACCA's website at https://www.accaglobal.com/gb/en/member/sectors/smp/practising-certificates-and-licences/legal-services/probate-reg.html.

2.17 The take-up of authorisations for probate has been disappointing and the prospect of ACCA's probate practitioner population growing appreciably in the future is low. In our application for the PCF in 2018/2019, we recognised that the number of authorised individuals could not be guaranteed. However, the number of members undertaking probate is significantly below expectations. There remains uncertainty amongst members about whether sufficient new business will be acquired to make probate training and application (and compliance) worthwhile.

2.18 In addition, ACCA is currently only able to authorise firms where all the principals are 'lawyers' (ie authorised for probate or other reserved legal activities). Where this is not the case, firms would require a 'licence' to operate as an alternative business structure (**ABS**).

2.19 In order to increase the number of authorised individuals ACCA would need to truly open up the legal services market to its practitioners by gaining recognition as a licensing authority for ABS and expanding the range of reserved legal activities authorisations (such as the administration of oaths). This would take considerable time and additional costs for ACCA and there remains inherent uncertainty regarding the demand from firms.

Authorisation fees

2.20 A legal activities authorisation fee per authorised individual is charged to firms applying for/renewing a FLAC. Refunds will be issued for an uplift in the fees for 2019 and 2020 which were not agreed with the LSB.

Income

2.21 The total income for probate in the three years to 2020 is estimated to be £33,000. This relates solely to legal activities fees from firms authorised to undertake probate activities. Fee income is significantly below expectations due to the low number of authorised individuals.

Fixed costs

2.22 Annual fixed costs are incurred in relation to the Kaplan-Altior probate course and assessment (£18,000), Regulatory Board meetings (£1,200), and the minimum levies payable to the LSB and Legal Ombudsman (**LeO**) (£24,000). Fixed costs also include the absorption of some departmental overheads, eg Authorisation staff training (£1,500).

Variable costs

2.23 Variable costs are incurred in respect of the processes of authorising individuals and firms (£28,728), interactions with the LSB and other organisations in relation to regulatory oversight requirements (£14,315) and member communications (£5,472). Expenditure does not include variable costs incurred in handling complaints and monitoring reserved legal activities, as these activities have not yet commenced. It also excludes the variable element of the levies payable (as the minimum threshold has not been reached) and probate course fees (which are met directly by the individuals enrolling with Kaplan-Altior).

2.24 ACCA's regulatory arrangements for legal activities are supported by central services. However, the probate budget does not include any element of central overheads (eg office, utility, IT costs) or time spent by the Executive Directors on legal activities regulation.

Implementation costs

2.25 Expenditure also includes historical costs[4] of £34,190 associated with implementing legal activities regulation, such as the costs of establishing regulatory arrangements and interactions with the LSB, LeO and others. In our application for the PCF 2018/2019, we adopted a reserved approach to cost recovery and anticipated that these implementation costs would be recovered over a five-year period, as uptake increased. However, due to the low number of authorised individuals, we no longer expect to recover implementation costs.

Deficit

2.26 In our application for the PCF 2018/2019, we projected an overall deficit of £3,440 over the first five years of probate authorisation. This assumed that the authorisation fee stayed level at £250 over the five year period and the implementation costs of £34,190 were absorbed over that period. However, due to the low number of authorised individuals, the overall deficit after a three year period to 2020 has increased significantly to £94,405. As a result, the costs incurred in regulating probate activities will not be recovered and will be absorbed by the wider ACCA business.

C. Regulatory activities

- Assurance that the regulatory arm has been given sufficient resources to carry out their functions in compliance with section 30 of the Act and the supporting Internal Governance Rules.

2.27 ACCA is satisfied that sufficient resources are available to carry out its regulatory functions in respect of probate and this is not impacted by ACCA's representative function.

III. Consultation on PCF

A. Description of the consultation process conducted with fee paying members[5]

- including length of time the published consultation was open
- summary of consultation responses
- changes to the PCF proposals as a consequence of consultation responses
- details of consultation with non-commercial bodies (e.g. Law centres federation, Citizens Advice etc.) or an explanation of why their views had not been sought.

Consultation

3.1 ACCA has not consulted its regulated community on the proposed 2020 PCF specifically for the purpose of this application because no fee increase is proposed.

3.2 ACCA has also not consulted with non-commercial bodies and the Legal Services Consumer Panel about the impact of the proposed legal activities authorisation fee for 2020 on persons providing non-commercial legal services. We believe this is not pertinent to our application, as reserved legal activities authorised by ACCA are provided out of commercial accountancy practices, and so it is very unlikely that these legal activities are charitable activities.

IV. Permitted Purposes[6]

This section requires information for both the current and budget year

[4] Historical costs incurred since ACCA became an approved regulator for probate in 2009.

[5] ARs should consult if they are proposing a fee increase. If the fee has been static or has fallen, AR should still consult at least every three years.

[6] See Section C of the Rules.

A. Description of total income (PCF and non-PCF) allocated to permitted purpose including

- Non-PCF income allocated or spent on permitted purposes, broken down by department/expenditure category
- Commercial income arising from PCF funded permitted purposes[7] (and explanation if this income is to be used for non-permitted purposes)

B. Description of total PCF income allocated solely to one or more permitted purposes including a breakdown of

- PCF income allocation to each regulatory permitted purpose
- PCF income allocation to each non-regulatory (representative) permitted purpose
- PCF income allocated to shared/ central services between the regulatory and representative arm (broken down by department/ expenditure category).

C. A description of permitted purposes activities which were/will be undertaken and if possible, an estimate of the proportion of permitted purpose activities undertaken relative to non-permitted purposes activities.

Permitted purposes

4.1 ACCA is clear and transparent about its allocation of financial resources to the regulation of reserved legal activities. The income from PCF is applied solely to permitted purposes, as set out in Section C of the Rules. In the three years to 2020, the PCF income has been applied to the Kaplan-Altior probate course and assessment and the regulatory levies payable to the LSB and LeO.

4.2 The income from PCF is not used for non-permitted purposes.

4.3 In practice, non-PCF income may be used for permitted purposes (as has been the case in respect of the costs incurred to date). Given the low number of authorised individuals, the proposed 2020 PCF of £250 will require a budget subsidy for legal activities from ACCA's membership subscriptions, general PC fees, examination entry fees, etc.

4.4 The permitted purposes activities undertaken include the regulation, accreditation, education and training of applicable persons[8], and the payment of levies imposed on the approved regulator.

[7] Referred to as derivative income in paragraph 7 of the Guidance.

[8] In respect of training, ACCA does not charge a fee for its probate training course and assessment, as this is provided and charged for by Kaplan-Altior.

V.	Transparency of PCF information to fee-paying members

A. A description or copy of the information that will be provided to fee paying members, which is clear and accessible and includes

- The level of the PCF
- How the PCF has been set
- A breakdown of how the PCF income will be allocated to non-regulatory/regulatory and shared services
- An explanation of why commercial income arising from PCF funded permitted purposes is to be used for non-permitted purposes.
- An accurate presentation and representation of the LSB and Office for Legal Complaints (OLC) levies so the regulated community is clear about the proportion of PCF attributable to the levies [9]

Clarity and transparency

5.1 ACCA provides clear and transparent information on the PCF on its website. Information on fees is also included in the guidance factsheets and application/renewal forms for a FLAC and for authorised individuals (ACCA members and non ACCA members). These forms are also made available on ACCA's website at https://www.accaglobal.com/gb/en/member/sectors/smp/practising-certificates-and-licences.html.

VI.	Regulatory and Equality Impact assessment

A. A description of how the proposed PCF may potentially impact on various groups, in particular those with protected characteristics, within the approved regulator's membership (whether the proposal is for the PCF to be static, increased or decreased).

B. A description of how the PCF has been developed in light of the Regulatory objectives set out in the Act and Better Regulation principles.

C. A Regulatory and/or Equality Impact assessment (optional)

Regulatory and equality impact assessment

6.1 ACCA seeks to ensure that the costs of regulation are met by the providers of the regulated activities. This application proposes a 2020 PCF for firms providing probate services that is proportionate, competitive and fair.

[9] As set out in paragraph 14 of the Guidance.

6.2 The proposed 2020 PCF has been calculated with due regard to the regulatory objectives and consistency with the regulatory principles.

VII. Other supporting information

The following enclosure forms part of this application:

Appendix 1 Budgeted income and expenditure for probate (as at 8 January 2020)

VIII. Contact details

Further information in respect of this application may be obtained by contacting:

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Appendix 1

Budgeted income and expenditure for probate (as at 8 January 2020)

	To 2017	2018	2019	2020	Total
Authorised individuals					
		16	44	5	
		-	16	51[10]	
		£250	£260	£273	
		-	£250	£262	
		£	**£**	**£**	**£**
Initial application fees		4,000	11,440	1,365	**16,805**
Renewal fees		-	4,000	13,218	**17,218**
Refunds		-	-	-1,023	**-1,023**
Fixed costs		14,300	12,800	17,600	**44,700**
Variable costs		15,691	17,784	15,040	**48,515**
Implementation costs[11]	34,190				**34,190**
	-34,190	**-25,991**	**-15,144**	**-19,080**	**-94,405**

[10] As at 8 January 2020, 39 authorised individuals have renewed for 2020.

[11] As per ACCA's application for the PCF 2018/2019.