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, the Rules and Guidance 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.

Please note, ICAEW does not use a PCF – single charge per person – funding or registration model.

Although the Legal Services Board and this application form uses the term practising fee or practising certificate

fee(PCF) this can be read as the probate fee or firm fee for ICAEW annual registration fees across the feescale.

(as shown in the various examples below).

All answers below relate to the ICAEW annual registration fee model which flexes based on the scale of the firm (bigger firms pay more).

The Professional Standards'(PS) proposal is to increase the annual probate registration fees by **1%** for 2020, this reflects;

- wage and general inflation in our delivery costs, and
- increase in delivery activities such as visits/reviews.

PS regulatory experience suggests it is best practice to introduce, where possible and justifiable, small annual increments in fees. This avoids:

- price increase shock (no increases for a number of years and then a larger change);
- helps build confidence; and
- understanding of the fee structure and aids financial planning for those registered with us.

The previous year's fees did not increase. 1% for example adds £1 for every £100 of fees. Example fee changes are illustrated below based on the 1.0% increase recommendation:

	2019 fee	2020 fee	Change
Authorised firm Single principal, 1 office	£353	£357	+£4
2-5 principals, 1 office	£616	£622	+£6
Licensed firm Single principal, 1 office	£353	£357	+£4
10-50 principals, 2-10 offices	£9,999	£10,099	+£100

Helpful, pre-application discussions were held with LSB analysts before the application was submitted to ensure that it was complete.

All things being equal, probate fees are expected to increase by a similar rate as suggested for 2020. A 1% increase om £357 is £3.57, a 1% increase on £622 is £6.22, a 1% increase on £9,999 is £99.99

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.

Please note the relatively small scale of our operation.

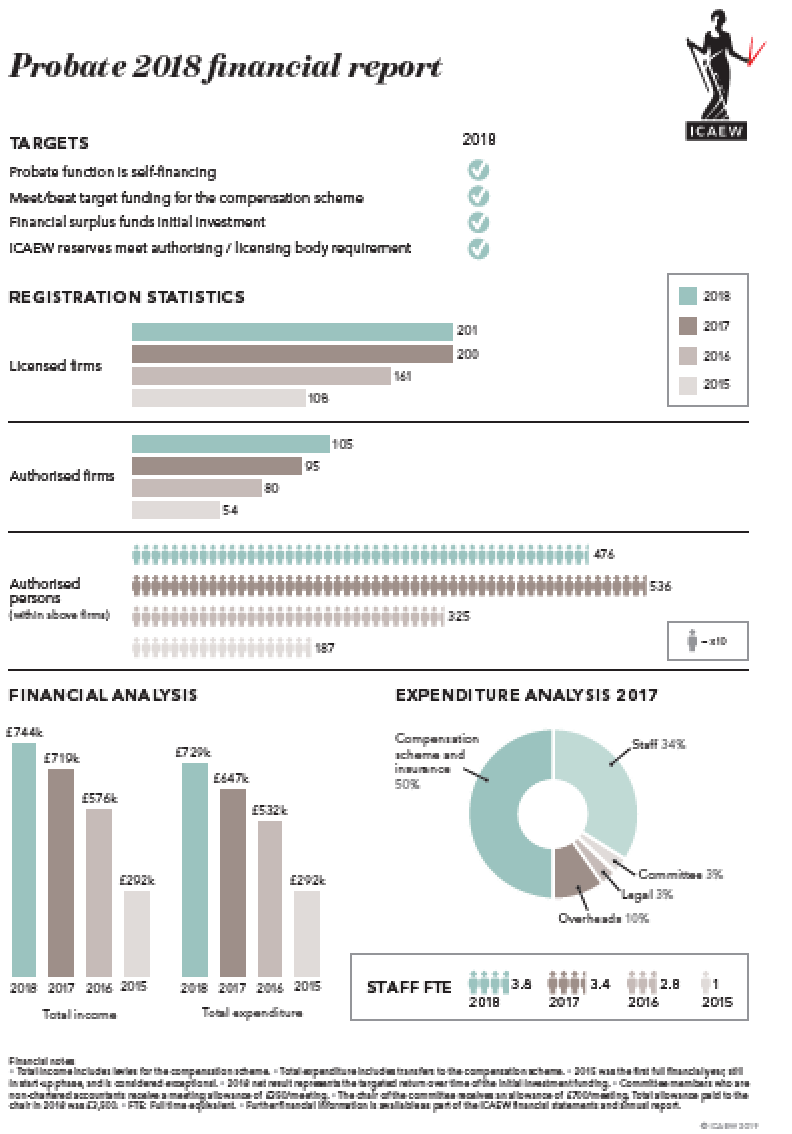
The probate budget is a component of the Professional Standards (ICAEW regulatory arm) detailed process which includes a regularly updated 18-month rolling forecast.

The probate regulatory budget is not impacted by the representative arm.

The Professional Standards department is the operational budget owner and is the regulatory arm. The department doesn’t produce budget statements for individual regulatory areas as such but the table below, assuming relatively static total numbers of registrations (as seen across the last 18 months) provides details of forecast 2019 and budget 2020.

Operational needs are considered in detail and analysed on a month by month forecast basis. This includes tracking and projection of delivery cost by type including e.g. staffing, legal and committee costs etc. and by function such as visit/review, policy, research and complaint requirements.

See also icaew.com/probate and the annual financial infographic analysis published on the ICAEW website.



Monitoring details are also available on the ICAEW website

Probate monitoring

PROBATE ACCREDITED FIRMS

as @ 31.12.18
Active - 301
Ceased - 71

VISIT NUMBERS

2015 - 28 (1.5% of PA visits undertaken)
2016 - 69 (3.5%)
2017 - 54 (2.4%)
2018 - 62 (2.8%)

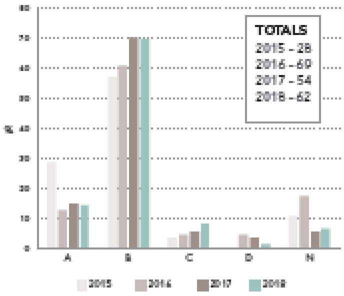
% OF VISITS REQUIRING FOLLOW-UP ACTION:

2015: 3.57% (**1**)
2016: 8.70% (**6**)
2017: 9.3% (**5**)
2018: 9.68% (**6**)

MATTERS REQUIRING FOLLOW-UP*

Ongoing eligibility for accreditation (**7**)
Probate compliance review (**5**)
Compliance with Clients' Money Regulations (**4**)
Engagement terms (**4**)
Probate procedures (**3**)
Publication of diversity monitoring data (**2**)
Marketing (**2**)

VISIT OUTCOMES



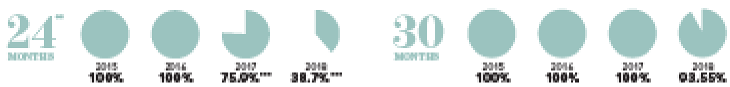
VISIT GRADES:

A - no instances of non-compliance
B - some non-compliance but the firm's responses address the matters raised
C - some follow-up action needed
D - detailed report to Probate Committee
N - firm doesn't have any Probate work

KEY PERFORMANCE INDICATORS:

Visits commenced within 24 months of accreditation

Visits commenced within 30 months of accreditation



CESSATIONS

Firms ceasing Probate accreditation prior to monitoring visit:
2015: **8** 2016: **11**
2017: **16** 2018: **11**

Firms ceasing Probate accreditation after monitoring visit:
2015: **6** 2016: **7**
2017: **3** 2018: **9**

Operational need is considered more formally at each re-forecast (3 times during the year) and ongoing from a delivery perspective and in discussion with stakeholders.

The forecast and annual budget is verified by the PS Director of Finance to ensure, for example, that strategic priorities, regulatory commitments, synergies, risks and mitigating actions, experience from current year operations and future commitments, including project plans, are taken into account.

Reserves are as per ICAEW policy and agreed with the Probate Committee, and confirmed and reviewed by the PS Director of Finance.

Operational reserves are considered adequate, and not higher than required, and therefore do not impact the fee proposal. Probate operations are a minor element of ICAEW. Reserves are held as a component of ICAEW Ltd company reserves. The probate team could access the reserves by;

Running an operational deficit in any one year

Spending on capital projects. This would draw down on available cash in advance of depreciation being charged across the life of the capital project.

Excerpt from ICAEW Financial Statements 2018

RESERVES POLICIES

Our agreed reserves policies ensure that ICAEW reserves are set at a level sufficient to cover both short-term requirements and longer-term investment needs:

- reserves should be set at a level equivalent to between three and six months of expenditure through the income statement; and
- cash and investment balances should be at least sufficient to cover between three and six months of annual budgeted/forecast gross cash expenditure.

Reserves exceeded this range at the end of the year but are expected to revert to the policy range in the short-term as we invest in business development, enhance our business systems and manage short-term operational demands. We are managing our capital investment programme, our pension commitments and our financial position in order to maintain these reserve needs, taking account of IFRS 15 impacts, and mitigate any impact on members and member services.

Group and ICAEW statements of changes to reserves for the year ended 31 December 2018

Group	Revaluation reserve	Investment revaluation reserve	Accumulated fund	Other reserves	Charitable trusts	Total
	£m	£m	£m	£m	£m	£m
Reserves at 1 January 2017 (restated) (*)	**9.7**	**6.0**	**(0.2)**	**5.1**	**14.4**	**35.0**
Net result after taxation	-	-	15.7	0.2	0.1	16.0
Increase in valuation of property, plant and equipment	7.0	-	-	-	-	7.0
Net change in market value of long-term investments over cost	-	1.2	-	-	0.6	1.8
Actuarial gains recognised in year on defined benefit pension scheme	-	-	2.5	0.1	0.2	2.8
Deferred tax attributable to above	(0.3)	(0.1)	(0.1)	-	-	(0.5)
Total other comprehensive income in the year	**6.7**	**1.1**	**2.4**	**0.1**	**0.8**	**11.1**
Total comprehensive income in the year	6.7	1.1	18.1	0.3	0.9	27.1
Reserves at 1 January 2018	**16.4**	**7.1**	**17.9**	**5.4**	**15.3**	**62.1**
Net result after taxation	-	-	13.9	-	(0.1)	13.8
Net change in market value of long-term investments over cost	-	(3.3)	-	-	(1.0)	(4.3)
Actuarial gains recognised in year on defined benefit pension scheme	-	-	5.6	-	-	5.6
Deferred tax attributable to above	0.1	0.6	(0.2)	-	-	0.5
Total other comprehensive income in the year	**0.1**	**(2.7)**	**5.4**	**-**	**(1.0)**	**1.8**
Total comprehensive income in the year	0.1	(2.7)	19.3	-	(1.1)	15.6
Reserves at 31 December 2018	**16.5**	**4.4**	**37.2**	**5.4**	**14.2**	**77.7**

PROBATE

£,000	Budget 2020	Forecast 2019
Income	**495**	**486**
Regulatory fees	484	475
Fines, costs & reg pens	11	11
Cost	**(480)**	**(471)**
Staff and overheads	(319)	(313)
Legal, research, insurance	(119)	(117)
Quality Assurance Travel	(6)	(6)
Committee direct costs	(16)	(16)
General office costs	(19)	(18)
Print, design & advertising	(1)	(1)
Surplus	**15**	**15**

The small surplus represents a return of set-up costs over time

2021 and 2022 results are not expected to be materially different to 2020 i.e. income is minorly expected to increase by inflation and be offset by a similarly inflationary driven increases in cost.

Costs above include an £18k pa contribution to the running and development costs of the Legal Choices website. ICAEW has volunteered to assist in this area which has come under funding pressure.

Staff costs include administrative functions but majorly related to policy, regulatory support (processing of applications, change and withdrawals and reporting), quality assurance (visits, reviews, annual returns, surveys and conduct (complaint management including investigation and, where applicable, taking cases through the committee and tribunal process).

Overheads relate to for example property, utilities and systems – underpinning and supporting the work of staff.

Committee costs relate to the running of the probate committee.

General office costs largely relate to supporting the work of staff.

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; and
- 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); and
- explain the reserves policy and rationale/requirement for any high level reserves.

Please note the relatively small scale of our operation and volume of registrations in context.

See previous table.

A detailed estimate for the next 3 years is not available but, at the current scale, is not expected to fluctuate materially from 2020 projections i.e. a slowly increasing fee to match inflationary cost increases c1% annually).

Income and cost risks are carefully and regularly monitored and considered through the forecast and budget process. Such financial projections are also reviewed with the PS Executive Director.

Projections of longer term cost variation are minor, and largely related to wage and general cost inflation. This is in the main why a small percentage increase now, and likely in future years, is recommended.

Income is largely related to annual registration fees.

Regulatory penalties/fine income will/would contribute to the costs of investigating such complaints and bringing them to committee. Such penalties/fines are not expected to exceed the cost of operations. Forecasting such penalties will never be a simple function of the budget process due to the highly speculative nature of an investigation process, penalty/fine decision and then cash recovery. We are young as a regulator in this area and continue to build our experience and data trending analysis.

ICAEW reserves policy is to ensure that there is a 3-month operational reserve (beyond a fully funded operational year) to cover costs if, for example, the function wind downs or transferred to another regulator. This is in line with the broad range of other ICAEW regulatory commitments, experience and agreed approach with oversight bodies.

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.

Please note the relatively small scale of our operation.

As a principle of our regulatory budgeting process and for 2020, adequate resource is budgeted and reserves and processes to re-prioritise are in place and considered appropriate to absorb reasonable operational changes during the year.

Financial modelling, projections and forecasts are prepared by a management accountant, in consultation with operational, HR, policy and quality assurance and conduct teams, and the estimates and results are reviewed and approved by the PS Director of Finance.

Budgeted income is used for purposes related to probate activities.

High level 2019 performance and budget expectations were shared with the Probate Committee. The committee approved a 1% increase in fees.

For prior performance, see annual financial infographic analysis published on the ICAEW website. Forecasts and budgets are constructed with previous and future performance and requirements in mind, including transparency.

Information is available at icaew.com/probate

The registration fee method is explained online https://www.icaew.com/technical/legal-and-regulatory/probate-services/become-accredited-for-probate/how-to-apply-and-application-forms

Relevant Rules

Rule D. 10 (b): evidence which demonstrates that reasonable care was taken in settling the application in the context of the budget necessary for the immediate and medium term

Rule D. 10 (d): clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions

Rule D. 10 (e): clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions

Rule D.10 (f) for the purposes of the enabling the LSB to assess the impact on the proposed practising fee, provide clarity and transparency on the allocation of all the approved regulator's financial resources, whether or not those resources arise from permitted purposes

Rule D. 11 (a): description of how the application was developed and settled, including any consultation carried out, whether or not some consultation was carried out by the Board (see below)

Rule D. 11 (b) where there is a proposed increase in practising fees, the budget should show anticipated income from all sources and its allocation to the permitted purposes for the current application and where available for the next 3 years

Rule D.11 (e): an explanation of contingency arrangements where unexpected regulatory needs arises in-year

Further details on how the funds are used and the feescales are published online https://www.icaew.com/en/membership/regulations-standards-and-guidance/fees-for-regulated-areas-and-affiliates

Answers to FAQ questions are published online https://www.icaew.com/en/membership/regulations-standards-and-guidance/fees-for-regulated-areas-and-affiliates/fees-frequently-asked-questions-and-answers

The feescales for authorised and licensed firms are published online with further explanation https://www.icaew.com/-/media/corporate/files/members/regulations-standards-and-guidance/regulatory-fees/icaew-regulatory-fees-probate-2019.ashx?la=en

III. Consultation on PCF

A. Description of the consultation process conducted with fee paying members[3]

- including length of time the published consultation was open;
- summary of consultation responses;
- changes to the PCF proposals as a consequence of consultation responses; and
- 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.

Relevant Rules

Rule D. 11 (a): description of how the application was developed and settled, including any consultation carried out, whether or not some consultation was carried out by the Board

Rule D 12: in considering an application submitted to it under this Part of these Rules, the Board reserves the right to consult any person it considers appropriate. In particular, it reserves the right to consult the Consumer Panel about the impact of proposed fees on persons providing non-commercial services.

PS has previously consulted with firms in terms of the principle of self-financing i.e. probate income funds probate activities. PS is pleased with the +80% positive response.

Feedback is gathered as part of the annual renewal process. Firms do not complain about current fee levels or request specific changes or highlight any issues with any particular groups.

[3] 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.

We do not expect any concern about a very small increase in registration fees, justified by cost inflation. In fact, our firms (and firm representatives on the Probate Committee) have shown an understanding of the demands of a self-financing financial model and of inflationary pressures.

Yes, consultation is complete.

We have invited all registered firms to consult us on the 1% increase. As expected, as the change is minor, there was a very small response rate. The majority were in favour of an increase. Example comments included

"1% is very modest in the circumstances."
"It is another increase in our operating costs. 1% may be modest in comparison to some increases, but it is an increase nonetheless."
"Any increased fee will impact on our profits as we are unlikely to be able to pass this onto clients, especially when the increased probate application fees come into force."
"As the proposed increase is modest this will not have a significant effect on my firm. Larger increases would definitely have an effect as my firm is very small."

Questions distributed on a 'Probate News' email to our registered firms

1. Does your firm agree or disagree with the proposed 1% inflationary cost driven increase which follows the ICAEW 'user pays' principle? Agree/Disagree
2. Will this have an impact on your firm? Yes/No
3. Please provide a brief explanation of how this change will/will not have an impact on your firm.

Results 7

Agree 4
Disagree 3

Yes 5
No 2

Please provide a brief explanation of how this change will / will not have an impact on your firm?

(7 total)

#	Responses
1	I feel that the probate fees are already at a relatively high level and as a firm we get very little from this. I personally feel that ICAEW has done very little to raise awareness and assist firms in promoting this service.
2	No issue with the inflationary increase. What I do have a big issue with is the fee should be based on the number of licensed practitioners (in our case 1) not the number of partners. We want to do this sort of work, and do, but the fees barely cover what we then have to pay ICAEW. The logic that the more partners the more of this work you will do is illogical and badly thought out.
3	It is another increase in our operating costs. 1% may be modest in comparison to some increases, but it is an increase nonetheless.
4	Any increased fee will impact on our profits as we are unlikely to be able to pass this onto clients, especially when the increased probate application fees come into force.
5	Probate services are a relatively new area of work still gaining momentum within the firm. Additional charges in these early years are not helpful and risk the viability of expanding into new service provisions.
6	A 1% increase is very modest in the circumstances
7	As the proposed increase is modest this will not have a significant effect on my firm. Larger increases would definitely have an effect as my firm is very small.

It is speculated that the low response rate is due to the very low, below inflation, fee increase proposed.

IV. Permitted Purposes[4]

[4] See Section C of the Rules.

This section requires information for both the current and budget year

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[5] (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.

Relevant Rules

Rule D. 10 (c): evidence which demonstrates that the revenues raised through the practising fee charge will be applied solely to purposes which are permitted purposes

Rule D. 10 (d): clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions

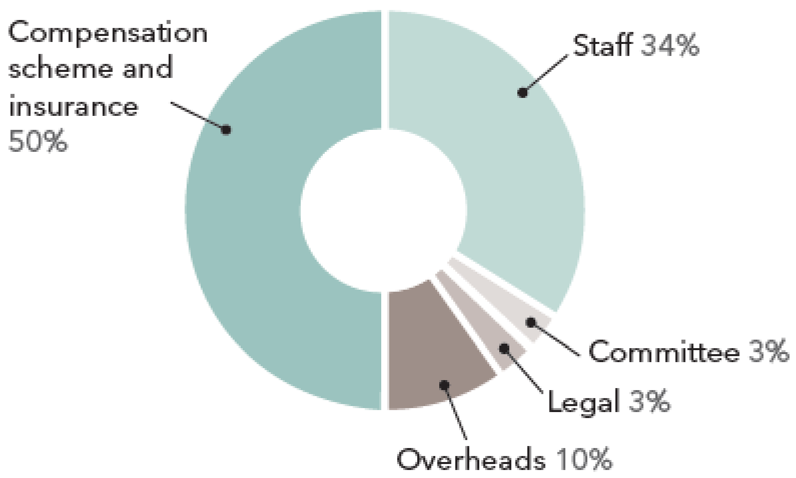
Rule D. 10 (e): clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions

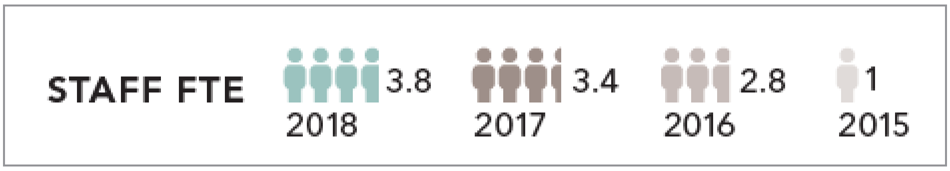
Rule D.11 (b) where there is a proposed increase in practising fees, the budget should show anticipated income from all sources and its allocation to permitted purposes to the current application and, where available, the next three years

See responses above in explanation.

Allocated resources/income are not expected to change from the list of costs described in the budget and shown in the financial analysis online

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





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 [6]

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

Relevant Rules

Rule D. 10 (d): clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions

Rule D. 10 (e): clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions

Rule D. 10 (g): evidence that persons paying the practising fees will have explained to them how revenue raised through the charging of practising fees will be applied as between the approved regulator's performance of regulatory functions and any other functions also carried on by the regulator

Rule D. 11 (d): an explanation of how the cost to each regulated person is to be broken down as between income to be allocated to the discharge of regulatory functions and income allocated to other functions

See above and reference to PCF and probate fee equivalence. Previous consultation explained the self-financing approach.

The online fee scales explain the rationale in how to calculate a registration fee. Larger firms pay a higher fee.

Registration fees and annual financial results and allocations are published on the ICAEW website.

There is no commercial income.

The LSB costs are considered minor (c1.3% of total expenditure) and will be referenced on the published 2020 fee scale.

As the size of registration changes the registration fee payable changes so the percentage of LSB cost applied also changes. How to represent this for every possible registration fee payable is still under discussion. It may be that we state that LSB costs are x% of probate related operating costs on the fee scale for transparency and simplicity.

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).

Relevant Rules

Rule D. 10 (g): a regulatory and diversity impact assessment

See comments above.

The increase is considered minor. Operational planning and associated registration fees therefore remain consistent with and in line with previously agreed strategic, operational and regulatory approaches as addressed through various submissions and discussions with the LSB.

We will ensure that our consultation includes the opportunity to comment on the impact and to highlight whether this relates to a specific grouping.

VII. Other supporting information

Further detail on the consultation including:

- the length of time the published consultation was open
  The consultation was open for 5 weeks
- the number of responses
  7
- a detailed summary of the consultation responses and how the views were taken into account when formulating the PCF proposal
  These and views expressed previously were taken into account;
  Firms do not wish to see large increases.
  Firms support the self-financing principle.
  Firms are not against fee increases but wish them to be considered in context of inflation and ability to pass on cost to their clients.
  Firms wish the fees and increases to be fair including a measure of proportionality

VIII. Contact details

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