20 October 2023

Approval of 2024 practising fees application made by the Costs Lawyer Standards Board (CLSB) 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 CLSB to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of practising fees charged by approved regulators.

2. Practising Fees are 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 practising fees for one or more of the permitted purposes which are set out in section 51(4) of the Act and the Practising Fee Rules 2021 (the "Rules")[1].

3. Practising fees are payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee as required by section 51 of the Act. The Association of Costs Lawyers (ACL) is an approved regulator, and the CLSB is the regulatory body to which ACL has delegated its regulatory functions.

4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)[2] which provides guidance on each of the Rules.

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

Summary and overview of practising fees application and decision

6. The application submitted by the CLSB[3] proposes that the practising fees to be charged to costs lawyers will be at the amount set out in the table below. The CLSB's projected total practising fees income for 2024 is £202,150 based on the assumption that 660

[1] https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf

[2] https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf

[3] https://legalservicesboard.org.uk/wp-content/uploads/2023/09/2024-PCF-application-CLSB-to-LSB-17-September-2023.pdf

costs lawyers will pay a practising fee[4]. This is an increase from budgeted practicing fees income of £197,612 in 2023 which was based on 677 costs lawyers paying the Practicing Fee.

Individual fee	2023	Proposed 2024
All costs lawyers	£281	£290

7. Of the total amount of practising fees to be collected (£202,150), £174,182 (84%) will be retained by the CLSB, while the remaining £27,968 (16%) will be used to fund the work of the Legal Ombudsman, Legal Services Board and Legal Choices. The cost per costs lawyer of the contribution will be approximately £7.50 for the Legal Ombudsman (2.6% of the practising fee), £26 for the Legal Services Board (9% of the practising fee) and £8.80 for Legal Choices (3% of the practising fee). The funds from the practising fees raised by the CLSB are solely for their regulatory functions. The representative body for the Costs Lawyer profession, the Association of Costs Lawyers (ACL), raises its own funds through a separate membership fee.

8. Based on our assessment of the information provided to us, we are satisfied that the CLSB's activities for 2024, which will be funded by the practising fees, fall within the permitted purposes as set out in rule 16 of the Rules. We are also satisfied that the CLSB has set its budget independently from the ACL, and that the CLSB has set out how it intends to discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.

9. Further, the application enables the LSB to be confident that the CLSB has carefully and properly planned its financial position for 2024. We are satisfied that the application provides transparency to the regulated community about available reserves and the financial resilience of the CLSB.

10. We are satisfied that the application provides transparency to the regulated community about the allocation of the CLSB's resources, including practising fees income. We have also considered the summary table prepared by the CLSB in its application, which sets out its allocation of the practising fees according to its activities, the associated permitted purposes and the expected benefit arising from the activity. The table is a tangible example of best practice in providing transparency and accountability to the regulatory community and the LSB.

11. We are satisfied that the engagement strategy of the CLSB has allowed it to adequately consult with its regulated community.

12. We consider that the application provides meaningful consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession. We note that the CLSB has a remissions policy in place for costs lawyers who reinstate their authorisation part way through the practising year, and this is set out in further detail in paragraph 24 below.

13. We consider that the CLSB has, in setting its practising fees for 2024, given due consideration to the impact of the level of the increased fee on its regulated community.

[4]Not all fee payers will pay the full fee as some will be subject to discounts and others will pay a partial fee as they join the profession during the practising year.

14. The LSB’s decision is to approve in full the CLSB’s proposed practising fees for 2024.

LSB assessment

Budget for 2024 and financial information

15. The application set out at pages 13 and 14 that the CLSB has budgeted expenditure of £226,626 and expects to raise practising fee income of £202,150. This leaves a shortfall of £24,476.

16. The CLSB submitted that it has a 2022 budget surplus of £24,289 which is currently held in a no-risk interest bearing account. The CLSB intends to use the surplus to offset the shortfall of £24,476 between the budgeted expenditure and practising fee income.

17. The CLSB notes that a PCF at £290 will leave a shortfall of £187 between budgeted income and budgeted expenditure. The CLSB confirmed on page 13 of the application that the £187 shortfall can be covered by reducing the CLSB’s 2024 contribution to reserves by £187 if necessary.

18. Page 12 of the application sets out that the CLSB budget assumes inflation of 10% based on CPI forecasts for the year with wages and costs of suppliers increasing by that amount. The application reassures us that should inflation be above 9%, the CLSB has plans in place to mitigate such a situation.

19. The CLSB explained at paragraphs 23 - 24 of the application that its reserve policy was revised in 2022 and its target level of committed reserves has been revised to approximately six months’ expenditure. The CLSB will be making a £5,000 contribution to its committed reserves only as it has already met the target level of uncommitted reserves of £110,000. As of 17 September 2023, the value of committed reserves is £15,637, which is 52% of the CLSB’s target level. The CLSB’s target level for committed reserves is £30,000, which will be used for future IT projects.

20. Notwithstanding the position in paragraph 19 above, we are reassured that, should an unexpected event arise that requires further expenditure beyond the budgeted figure of £226,626, this can be met from its reserves. We are also reassured that, as uncommitted reserves would currently accommodate the CLSB’s target of 6 months of operating expenditure, the CLSB is financially resilient.

21. We asked the CLSB if there was an audited copy of its 2022 financial statement. The CLSB replied that as it is a “small company” as defined by the Companies Act 2006 and its guidance, it does not need to have its statements audited. We accept the CLSB’s position is permissible under the Companies Act, however, the LSB would encourage the CLSB to consider implementing an external audit on their financial records every three to five years as a matter of good practice.

22. In response to the LSB’s recommendation in the PCF Decision Notice for 2022, the CLSB included additional financial information by setting out its actual income and expenditure for 2023 at Annex 5. We are pleased to see the CLSB provide the actual income and expenditure for 2023 with this application.

Equality Impact Assessment

23. The CLSB provided at Annex 10 of the application, an initial Equality Impact Assessment (EIA) which considers the likely impact of the level of the practising fee against each of the protected characteristics. The initial EIA was included as part of the CLSB's consultation and asked if respondents would be adversely impacted by the level of the practising fee, and if so, how their needs could be met. Consultation responses did not suggest that any group of practitioners would be unfairly or disproportionately burdened by the proposed practising fee level. Additionally, no respondents cited any view that the level of the practising fee would impact a person or group with protected characteristics.

24. The initial EIA showed a potential impact on the protected characteristics of sex (gender) and pregnancy and maternity as these groups may take extended periods of leave, such as maternity, shared parental or any other type of leave that may be taken by anyone with these protected characteristics (collectively referred to as "parental leave"). The CLSB has previously identified that costs lawyers who took such leave would incur different practising fees depending on the time of year that their leave commenced. Following consultation, the CLSB decided to implement a remissions policy, which enables practitioners to seek a reduction in their fee for the whole period they are on parental leave, regardless of the start date.

25. We consider that the application provides meaningful consideration of equality issues and demonstrates that this has informed the CLSB's approach, which is positive and is particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession.

Decision

26. The LSB has approved the practising fee application submitted by the CLSB for 2024 under section 51 of the Act.

Summary of expectations for the CLSB's practising fee application for 2025

27. Further to paragraph 21 above, the CLSB may wish to set out any considerations it has given to conducting an external audit.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
20 October 2023