11 October 2021

Approval of 2022 Practising Certificate Fee (PCF) 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 PCF charged by approved regulators.

2. A practising fee – PCF – is 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 and rule 8 of the Practising Fee Rules 2021 (Rules)[1].

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. The Association of Costs Lawyers (ACL) is an approved regulator, and the CLSB is the regulatory body to which the 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. The Rules specify the permitted purposes that the practising fee may be applied to, the criteria and material the LSB will consider before deciding to grant an approved regulator's application in whole or part, the information approved regulators are required to submit and the application process and procedure. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)[2] which gives guidance on each of the Rules.

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

Summary and overview of PCF application and decision

6. The application submitted by the CLSB proposes that the PCF charged to individuals in 2022 be increased by £6 to £281 from £275. This is an increase of approximately 2% over the previous year.

7. The CLSB projects total PCF income for 2022 of £191,020, based on the assumption of 670 individuals paying a PCF. This is a slight reduction from the 675 who paid a

[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

PCF this past year. CLSB has explained its approach to its estimate at Paragraph 16 of the application and we are satisfied with its reasoning.

8. We are satisfied that the CLSB's activities for 2022 which will be funded by the PCF fall within the permitted purposes, in compliance with section 51(2) 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 the forthcoming year. The CLSB has also updated its reserves policy and we are satisfied it complies with the requirements of the Rules.

10. The CLSB has provided us with a level of detail that demonstrates transparency and accountability for its regulatory activities and the allocation of its resources. We note that the CLSB's consultation on the proposed PCF included detailed information on its planned regulatory activities and how it will assess the benefits of activities. It has also set out the benefits to its regulated community associated with the PCF paid for 2020. The consultation enabled more meaningful engagement as it attracted 21 responses, an increase from 17 last year.

11. The application considers the estimated impact of the proposed PCF on persons with protected characteristics under the Equality Act 2010 and the impact of Covid-19 on authorised persons and firms' income for 2022. It concludes that, on the evidence held, there is no indication that the proposed level of PCF will adversely impact persons with protected characteristics other than in the areas of pregnancy and maternity and gender. In those areas CLSB has policies in place to mitigate any impact. In addition, the evidence held indicates there is no adverse impact because of Covid-19.

12. The LSB's decision is to approve in full the levels of the PCF for 2022 to be charged to individuals as set out in the application.

LSB assessment

Allocation of practising fee to permitted purposes

13. The CLSB's programme of activity is linked to its mid-term organisational strategy for 2020-23[3] and its 2022 Business Plan[4] which adopted the strategic objectives identified in the mid-term strategy. All PCF income will be used for permitted purposes that are regulatory functions, with the majority for the regulation, accreditation, education and training activities. The CLSB has also set out the level of funding required to deliver its programme of activity.

14. The CLSB intends to distribute the cost of the level of PCF funding required using a proposed fee structure consistent with previous years, with the entire fee to be collected from individuals on a flat fee basis.

15. The CLSB has explained how it assessed the expected benefits of these activities at the point that the programme of activity was determined and how it will assess the

[3] https://clsb.info/download/mid-term-strategy/?wpdmdl=1060&refresh=6125e4272fc321629873191

[4] https://clsb.info/download/annex-a-proposed-2022-business-plan/?wpdmdl=26422&refresh=6140b41b6d5831631630363

actual benefits after the activity has been completed. This can be found at pages 6 to 11 of its application which sets out the expected benefits of its activities and the relevant regulatory objectives.

16. We are satisfied that the CLSB has complied with the two guiding principles in setting the PCF, that is, that the PCF must be allocated solely for permitted purposes set out in section 51 of the Act and rule 8 of the Rules, and that it will discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act. We are also satisfied that the CLSB has set out how it has measured the expected benefits of these regulatory activities at the point at which the activities were determined and how it will assess the actual benefits after the activities have been completed.

17. We consider the summary of activity funded by the 2020 practising fee (Annex 3 to the application) provides transparency concerning the work undertaken last year including expected benefits measured against the actual benefits achieved. We commend the CLSB for assessing the benefits of the activities which it conducted in 2020.

<u>Budget for 2022 and financial information</u>

18. The CLSB has provided its draft budget and the income and expenditure for the previous year. Paragraph 16 of the application notes that the 2022 draft budget takes the following into consideration:
    - fixed CLSB expenditure and variable core expenditure
    - inflation linked to CPI forecasts for the year
    - costed priorities in the CLSB's 2022 Business Plan
    - estimated number of PCF renewals
    - contingency funding for unpredictable expenditure such as any enforcement functions
    - transfer to reserves

19. We note that CLSB has been successful in obtaining funding from the Regulator's Pioneer Fund for a research project considering how Costs Lawyers may be able to reduce the costs of legal services. This means the project will be 100% funded by the grant and will be offset by expenditure. The application mentioned this project but we note that income and expenditure relating to this work is understandably not represented on the budget supplied and we accept that the overall impact will not affect the proposed deficit.

20. We are satisfied that the application provides transparency to the regulated community about the allocation of the CLSB's resources (including PCF income) and enables the LSB to be confident that the CLSB has carefully and properly planned its financial position for the forthcoming year.

<u>Reserves and financial resilience</u>

21. The CLSB updated its reserves policy earlier this year. Changes included:
    - the target level of uncommitted reserves was reduced from 12 months to 6 months' operating expenditure. This change followed CLSB's consideration of

the policy and likely cost associated with scenarios that would carry financial risk.
- a reduction in the yearly contribution to reserves from £10,000 to £5,000.

22. The application confirms that uncommitted reserves held are £110,000 which meets the target of 6 months' operating expenditure in the Guidance. Committed reserves at the time of application are £5,545 with a target of £30,000 to be met through annual £5,000 contributions to reserves which are budgeted for. Committed reserves will be used for future IT development projects.

23. The reserves policy (provided at annex 6 to the application) clearly articulates the risks mitigated through the reserves and confirms that the policy will be considered on an annual basis.

Consultation and engagement

24. The CLSB consulted on its proposed PCF, seeking comment on the fee, proposed programme of activity for 2022, the benefits of regulation and any equality impact associated with the level of PCF. earlier this year.

25. The consultation included information on CLSB's proposed Business Plan, benefits from last year's activities funded by the PCF, the proposed budget, accounts and an initial equality impact assessment.

26. There were 21 respondents to the consultation, with the majority of respondents supporting the proposed level of PCF. The CLSB did not get significant engagement on its proposed business plan. It may wish to consider alternative routes to obtaining input from the profession beyond its consultation document.

27. The LSB welcomes the CLBS's transparency and accountability on its activities in its engagement with its regulated community. This all serves to promote a meaningful discussion regarding the costs, benefits and value of regulation. Further, we note that the application also provides transparency on the consultation responses received and how these have been considered.

Impact assessments

Equality Impact assessment

28. The application included a summary of the CLSB's initial Equality Impact Assessment ("EIA") on the impact of the level of the proposed PCF on legal services carried out by authorised persons, in particular those with protected characteristics. Under the EIA the CLSB identified potential adverse impacts related to maternity and sex but had clear mitigating action through the CLSB's fee remissions policy.

29. The CLSB's PCF consultation included a copy of the EIA and invited comments on whether respondents would be adversely impacted by the level of PCF. There were no responses that indicated any groups of practitioners would be disproportionately impacted.

30. 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 are content that a full EIA was not required for the proposed minor increase in PCF.

Wider impact assessment

31. The CLSB states it had been mindful of the impact of Covid-19 over the last 18 months when considering the impact on of the proposed PCF on the provision of legal services by authorised persons. Its latest coronavirus impact survey shows impact had in fact been less than anticipated.

32. The CLSB states it engaged with the Legal Aid Group in assessing the impact of the PCF, as adverse impact from Covid-19 on legal aid practitioners has been more significant than elsewhere in the sector. Despite this, the CLSB has not seen evidence that the level of PCF is causing a significant impact to legal aid practitioners.

33. We note the CLSB has given appropriate consideration to the impact of the level of the PCF on the conduct of legal services by their regulated community in setting the PCF for 2022.

Decision

34. The LSB has approved the PCF application submitted by the CLSB for 2022 under section 51 of the Act.

Summary of expectations for next application

- CLSB to consider alternative routes to obtaining input from the profession beyond its consultation document and to seek to further increase engagement.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
11 October 2021