



Refusal of 2021/22 Practising Certificate Fee (PCF) application made by the Council for Licensed Conveyancers (CLC) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

1. The LSB has refused an application made by the Council for Licensed Conveyancers (CLC) 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 and 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 CLC is an approved regulator which has solely regulatory functions and no representative 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 CLC PCF application submitted to the LSB, proposes a change to its PCF structure and a significant change to its methodology for apportioning the Office of Legal Complaints (OLC³) levy component of the PCF across its regulated community.

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 The OLC is the board of the Legal Ombudsman which investigates complaints about lawyers in England and Wales.

7. The CLC has referred in its application to a PCF and a separate charge for the cost of using the OLC. However, where payment of both sums is a condition of practice, the PCF for the purposes of this application constitutes the total of both sums.
8. The CLC levies a PCF on all CLC regulated practices, which is based on the practice's turnover. The current turnover bandings were introduced in 2010 and have not been amended since implementation. The proposed fee structure is as follows:
 - Individual licence fees payable by CLC lawyers providing conveyancing services or probate services will remain unchanged at £400 and £475 for both, for 2021/22⁴.
 - PCF payable by CLC regulated practices will continue to be based upon a percentage of turnover, but there is proposed increase in the number of turnover bands from 4 to 9.
9. The CLC is proposing to split the OLC levy from the PCF and bill practices separately. It proposes that the OLC levy to practices will be based on two elements; a fixed fee determined by the proposed turnover bands (the availability fee) and a usage element (the usage fee) based on the case numbers used by the OLC to determine the levy payable by the CLC (this is the number of referrals to the Legal Ombudsman rather than the complaints upheld). The CLC proposed that the usage fee would be calculated on the basis of the number of cases a practice has had referred to the Legal Ombudsman over the last three years.
10. As a consequence, the CLC's proposed PCF turnover bands have been recalibrated to reduce the total amount of PCF collected (in contrast to the PCF collected in 2020) to remove the OLC cost of £686,511. The application notes that this reduction is partially offset by an increase of £286,458 to its proposed budget, which has been driven by an increase in the OLC levy charged to the CLC of £166,74 for 2021/2022⁵, and an increase in the PCF to be collected of £119,664 to reduce the CLC's planned reserve utilisation in 2022. The net reduction in PCF is £400,053.
11. The CLC proposes that the availability fee will account for 20% of the total cost of the OLC levy imposed on the CLC and the remaining 80% would be recovered through the usage fee, which equates to a case fee of £2,087.66 per case referred to the Legal Ombudsman. The CLC accepts that one of the main drivers for this change in approach is the increasing OLC costs (it estimates that this year the OLC levy will account for 34% of the CLC's PCF collection for 2022, compared with 17% in 2019).
12. There were only five responses to the CLC's consultation (four from the profession, of which two were duplicates, and one from the OLC) and these raised a number of concerns about the proposals. For example, the Legal Ombudsman expressed concern that the CLC's charging model could encourage service providers to make a commercial decision to settle the complaint in-house (even when a complaint does not warrant it) in order to prevent paying OLC levy fees. Further, it noted that the proposal does not distinguish between cases where there is evidence of poor complaints handling and cases where the complaints handling was reasonable. This may be seen to disadvantage those who have taken the correct steps to resolve a

⁴ All other charges that were summarised in Appendix A of the application would also remain unchanged.

⁵ This is in addition to an increase of £96,886 for the preceding period.

complaint at first tier, but the consumer has decided to take it further. The Legal Ombudsman noted that this could have an impact on transparency around evidence of poor service and could lead to regulatory issues remaining undetected for a long period of time due to them not surfacing through its complaints data.

LSB assessment of PCF proposal and grounds for refusal

13. In its application, the CLC argues that its proposed change to the methodology for apportioning OLC costs is a fairer and more proportionate way of distributing the OLC costs amongst its regulated community and follows the OLC's own charging model for regulators. It also states that it creates more transparency around OLC costs and liability for them and will incentivise firms to improve first tier complaints handling (18% of firms generate 49% of complaints), which will benefit consumers.
14. We raised two iterations of issues with the CLC as part of our assessment of the application. On 14 September we sent a series of questions that were mainly focused on the proposals for the OLC levy. The key concern articulated was that the application did not demonstrate full consideration of the potential risks and negative impacts of the proposal and how they could be mitigated. The CLC provided a response on 21 September, and we met with CLC colleagues to discuss those responses on 22 September.
15. A second set of issues was raised on 23 September and set out the LSB's continuing concerns relating to several matters, including how the CLC assessed the risk of disincentivising effective complaints handling and what the CLC would do to monitor and mitigate against this, as well as a request for details of what regulatory action CLC is pursuing to address evidence of deficient first tier complaints handling. The CLC provided a further response on 29 September.
16. In principle, the LSB welcomes the outcomes that the CLC is seeking through its proposed approach to covering the costs associated with the OLC levy. In particular, we strongly support the proposition of incentivising good complaints handling and the intention to develop innovative new approaches to achieve this.
17. However, the CLC has not adequately justified the extent to which the burden of OLC costs should fall on those whose complaints are not upheld by the Legal Ombudsman. This takes on added significance given that the Legal Ombudsman waives its £400 case fee for half of all complaints it investigates from CLC regulated firms⁶. We are concerned that the proposed model, which would impose a significant financial cost on firms for every case which is referred to the Legal Ombudsman (regardless of the quality of the first-tier complaints handling or the merits of the complaint), could serve to disincentivise constructive and open engagement by firms with first tier complaints handling. If this risk were to materialise, it would run counter to wider strategic imperatives to improve firms' engagement with consumers and could be contrary to the regulatory objectives⁷, in particular the interests of consumers and the public interest. It would also serve to undermine the outcomes that the CLC is seeking through this change.

⁶ The Legal Ombudsman will only charge a case fee where it has both made a finding of inadequate complaints handling and if any remedy awarded by it, or through an agreed settlement after the case has been accepted by for investigation, was higher than any remedy offered by the authorised person at the first tier.

⁷ [s1 \(1\) of the Legal Services Act 2007](#)

18. This is a risk that was raised by respondents to the CLC's consultation on its proposed approach as well as by the LSB through the assessment process. The CLC's application, its response to its consultation exercise and its response to the issues raised by the LSB, does not provide sufficient assurance that this is a risk that has been adequately factored into the CLC's proposal. As a result, we are not assured that the CLC has in place appropriate or proportionate plans to mitigate this risk and the associated negative impacts on the regulatory objectives that may result from it. Therefore, we cannot conclude that the CLC's proposals are compatible with the regulatory objectives, in accordance with Rule 6(a) of the Rules.
19. Our concerns are compounded by what appear to be very low levels of engagement with the proposals by the profession and other stakeholders, and shortcomings in the CLC's approach to consultation and engagement on its proposed changes. Rule 24 sets out a requirement for approved regulators to *engage effectively with as many relevant authorised persons as reasonably practicable, on the matters set out in Rule 23 (relevant to this application, Rule 23(b) the level of the practising fee and, in particular, any variation on the fee for the previous year; and 23(c), the distribution of the practising fee across the relevant authorised persons with an explanation of any changes to that distribution)*.
20. Our expectations on consultation and engagement are all the more significant given how material this change is, not least where the LSB will need to understand what the likely impact of the proposal would be on the regulated community as required by Rule 27(a).
21. We have a number of concerns about the effectiveness of the CLC's consultation and engagement on this proposal:
 - the consultation paper did not present any alternative options or approaches to achieve the desired outcomes and did not identify some of the key risks associated with the proposal (such as the potential unfairness of charging those who have not provided inadequate complaints handling, or potential disincentives to engage proactively with complaints handling or signposting)
 - the consultation achieved a low response rate (only five responses of which one was a duplicate), which is particularly concerning for a change that would have such a material impact
 - as noted above, we are concerned that material issues raised through consultation have not been given sufficient consideration.
22. Taken together, these concerns lead us to consider that the CLC did not *engage effectively with as many relevant authorised persons as reasonably practicable* in relation the changes proposed in accordance with Rule 24.
23. Accordingly, the CLC has not met the requirements of Rule 29(a) of the Rules: *When making an application under Rule 9 an approved regulator must satisfy the Board that the approved regulator has complied with these Rules and had regard to the Guidance.*
24. This is because the LSB is not satisfied that the CLC has complied with Rule 6 (acting compatibly with regulatory objectives) or Rules 23 or 24 (consultation and engagement) in relation to this application. Additionally, these shortcomings result in inadequacies in the CLC's assessment of impact as required by Rule 27(a).

Decision

25. The LSB considers that the CLC has failed to satisfy the LSB of the matters set out above, and in accordance with Rule 30(a) has decided to refuse the entire PCF⁸ and in accordance with Rule 30(c) requires the CLC to resubmit the application addressing the matters set out in Rule 29(a). As noted above LSB welcomes the CLC's innovative approach and principle of incentivising best practice.
26. As noted in paragraph 131 of the Guidance, we consider refusal of an application to be a last resort. Given the significance of the change and its repercussive effect, we would have expected the CLC to realise the proposal carried a risk of refusal and engage with the LSB at an early stage, so that any potential issues may be identified and addressed in the application prior to submission to the LSB for approval, as set out in paragraph 132 of the Guidance.
27. The LSB notes that the CLC has explained in paragraph 18 of its application that should its application not be approved within the required timeframe, the CLC will utilise its reserves to continue operations until such time that the PCF application is amended and approved. The CLC has stated that its minimum reserve should enable the organisation to continue operations without restrictions for approximately six months.

Interim PCF collection

28. The CLC's application explains at paragraph 19, that if the application was not approved, the CLC would request permission to continue collecting the current monthly direct debit from practices (based on last year's approved PCF) pending an approval decision by the LSB. This is because the CLC consider that delaying the collection, would mean collecting the PCF over a shorter period of time which could have a detrimental impact on practices. The CLC would amend remaining collections once a PCF is approved. In the circumstances, the LSB agrees to allow the CLC to charge this monthly PCF based on last year's approved PCF, as an interim measure pending approval of the resubmitted application, in accordance with Rule 31.

The Board of the Legal Services Board
20 October 2021

⁸ The CLC has explained that if the proposal relating to the OLC levy was not approved then the PCF turnover bandings would need to be amended so that the cost of OLC was incorporated into the PCF as it has been in previous years. This would require a resubmission of the entire application by the CLC.