

# PCF Review Workshop

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10:00 – 12:00, 27 March 2020

# Agenda

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Topic	Time
1. Welcome and introductions	10:00am
2. Terms of reference	10:05am
3. Background	10:10am
4. Key themes and initial working proposals	10:15am
5. Next steps/wrap up	11:50am

## 2. Terms of Reference

# Terms of reference

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## Summary of the terms of reference

**Forum** to enable collaborative discussion on the initial working proposals

**Open** to all approved regulators and regulatory bodies

**Inform** our emerging thinking on development of the PCF approval process

**Not** a decision-making forum

Material from the workshop (such as slides) will be **published** on the PCF Review page of the [LSB website](#)

The workshops will take place on two dates: 27 March 2020 and 30 March 2020

# 3. Background

# Background

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## Our Work

### Current Work

### Work related to previous years

[Statutory decision making](#)

[Alterations to regulatory arrangements](#)

[Designations applications](#)

[Section 51 – practicing fees](#)

[Alterations made under the Administration of Justice Act 1985](#)

- Each year the LSB must assess applications made by approved regulators under section 51 of the Legal Services Act 2007 for the approval of their respective Practising Certificate Fee (PCF)
- In our 2019/20 Business Plan, we announced our intention to review the PCF approval process, including regulator’s approach to non-regulatory permitted purposes.
- We will develop our approach to the PCF approval process in collaboration with approved regulators and regulatory bodies.
- We will consult on revisions to the [Practising Fee Rules 2016](#) and [Guidance to Approved Regulators on PCF applications](#)
- Our aim is to create more transparency around the existing PCF approval process

# Background – Rationale and steps taken so far

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## Rationale:

- Greater level of transparency over the allocation of PCF funded activities would allow those that pay the PCF to drive accountability for the expenditure of PCF income and would inform the LSB's oversight responsibilities.
- We want to ensure the PCF process is linked to regulatory performance and forms part of a coherent and joined up approach to regulation.

## The project team has:

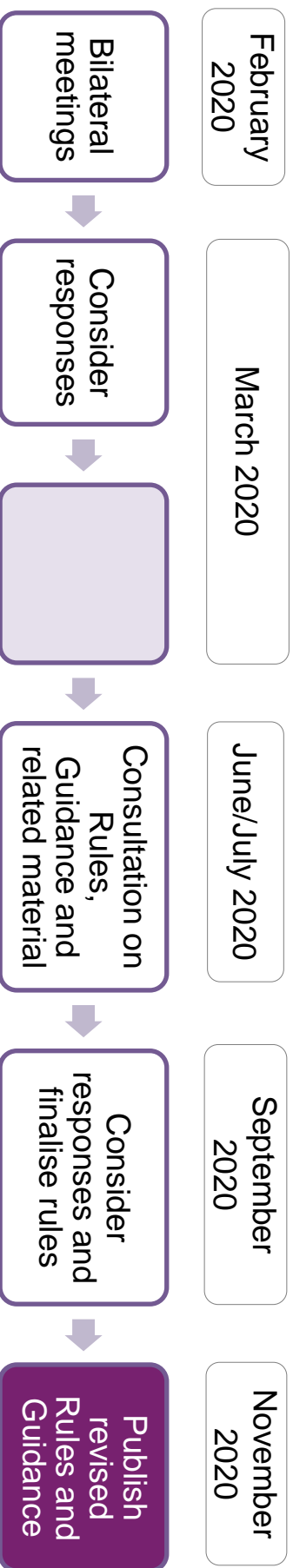
- Conducted a review of all PCF applications for **2019/20** and **2018/19**
- Identified evidence based **key themes**
- Developed some **initial working proposals** on each of the key themes
- Held **initial meetings** with approved regulators and regulatory bodies in February 2020

The key themes and initial working proposals reflect our emerging thinking. We are open to, and very keen on hearing views on them from approved regulators and regulatory bodies

# Background – PCF Review timetable

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The project commenced in Q3 2019, near the end of the 2019 PCF cycle. We intend to implement the final Rules and Guidance in November 2020 ahead of the 2021 PCF cycle



We will be keeping the timetable under review in consideration of the impact from COVID-19.



## 5. Key Themes and Initial Working Proposals

# Key themes and initial working proposals

## Key theme

### Overarching purpose of the PCF approval process

The Rules and Guidance could be clearer on the LSB's priorities and degree of scrutiny given to PCF applications

## Initial working proposal

- We will set out some **principles** as part of an **overarching statement** which will clarify the overall purpose of the PCF approval process. Our initial thoughts on what the principles may look like is shown below.

## Approved regulators and regulatory bodies

Show a clear understanding of the **programme of activity** required to deliver sufficiently against the regulatory objectives and other requirements of the Act

Set out clearly the **overall level of resource required to deliver** the programme of activity and a **sensible means of distributing the burden among the regulated community**

Provide evidence that the programme of activity is being **delivered with efficiency**

Show a clear **understanding of the context and environment regulated**

Provide **evidence of meaningful engagement** with the regulated community on both the costs and benefits of regulation

Demonstrate **transparency** as to how the PCF is to be used and how any benefits are to be assessed

# Key themes and initial working proposals

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## Key theme

### Overarching purpose of the PCF approval process

#### Key points made by stakeholders during bilateral meetings:

- For the programme of activity, timing may be an issue as business plans are produced later in the year
- May be able to demonstrate programme of activity through existing publications such as annual reports, business plans etc
- What constitutes 'meaningful' engagement?

#### Discussion (20 mins)

What are your views on these points?  
Are there any other areas which you think the LSB should consider in developing the principles?

# Key themes and initial working proposals

## Key theme

## Permitted Purposes

**Transparency** on the allocation of PCF income to permitted purposes activities could be improved.

**Clarity** on whether the **methodology** approved regulators use to allocate PCF income to permitted purposes is compliant with section 51 of the Act.

## Initial working proposal

- To ensure there is **transparency** to allow those that pay the PCF **to drive accountability** for the expenditure of PCF income and enable the regulated community (and the LSB) to better scrutinise spend on non-regulatory permitted purpose. More detail in diagram further below.
- To ensure the methodology approved regulators use to allocate PCF income to non-regulatory permitted purposes is **compliant with section 51 of the Act**.

- More detail on the **specific activities** that are considered **non-regulatory permitted purposes** and  
- How they **align with the regulatory objectives, regulatory performance and/or address areas of risk for consumers' and public interest**

Increased **transparency** on the breakdown of PCF income attributed to the approved regulator and regulatory body

Evidence that PCF income from the previous year has been spent on permitted purposes **in a cost-effective way that has achieved its objective**

# Key themes and initial working proposals

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## Key theme

## Permitted Purposes

### Key points made by stakeholders during bilateral meetings:

- On assessing impact, some activities involve short interventions whereas others take longer to evaluate.
- Would welcome guidance on methodology for allocating PCF to permitted purposes and on which activities would be in or out of scope

### Discussion (15 mins)

What are your views on these points? Do you have any other views?

# Key themes and initial working proposals

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## Key theme

### Reserve arrangements

Need for greater clarity about how approved regulators have determined their reserve arrangements and how much PCF income is accumulated in them.

## Initial working proposal

- To update the Rules and Guidance to make LSB's expectations clearer on reserves.

Have a clear **reserves policy, justification** for it and the **level of reserves** held

Demonstrate that reserves have been set at an **adequate level for the upcoming budget** (taking account of contingencies and other unexpected costs)

**Ringfence reserves** which **contain PCF income** (including income generated from PCF) or explain why this is not possible.

Demonstrate clearly where there have been **changes to the reserves policy**

# Key themes and initial working proposals

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## Key theme

## Reserve arrangements

### Key points made by stakeholders during bilateral meetings:

- What is meant by “adequate level”?
- General agreement that approved regulators should not be building reserves beyond what is necessary.

### **Discussion (10 mins)**

What do you think about these points?  
Any other views?

# Key themes and initial working proposals

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## Key theme

### Equality and regulatory impact assessments

Generally, there is a lack of **meaningful equality or regulatory impact assessments** in PCF applications despite proposals to increase fees or change PCF methodology. No persuasive explanations given as to why these assessments are not necessary. This impacts the LSB's obligation to comply with its public sector equality duty under the Equality Act 2010.

## Initial working proposal

- An **initial equality impact assessment** of any differential impacts on individuals who have protected characteristics should be conducted as a minimum. If the initial equality impact assessment reveals more than a minimal impact then a **full impact assessment** should be undertaken.
- Approved regulators and regulatory bodies show clear understanding of **the context** in which they operate to ensure any changes or risks to the sector have been considered.



# Key themes and initial working proposals

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## Key theme

## Equality and regulatory impact assessments

### Key points made by stakeholders during bilateral meetings:

- If PCF is the same year on year, would an impact assessment need to be carried out again?
- Some stakeholders felt that guidance on what a good full impact assessment (both regulatory and equality) looks like would be helpful.

### **Discussion (15 mins)**

What do you think about these points?  
Do you have any other views?

# Key themes and initial working proposals

## Key theme

## Consultation and engagement

Most of the PCF applications for 2019/20 demonstrated that:

- the regulated community was not adequately engaged by approved regulators
- the costs and benefits of regulation and what it is achieving has not been meaningfully communicated.
- there is a lack of transparency around how consultation responses were considered and whether they resulted in changes to the PCF proposal.

## Initial working proposal

- Our four initial proposals are below.

Consult if there is an **increase** to PCF or **change** in PCF methodology

Publish an **account of what the expenditure of PCF income** in the previous PCF year has achieved

Demonstrate that **meaningful steps** have been taken to engage the regulated community, which could have a range of manifestations such as the publication of costed business plans

Demonstrate **how consultations response** have been considered and any **changes** made to proposals as a consequence, or explain why not

# Key themes and initial working proposals

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## Key theme

## Consultation and engagement

### Key points made by stakeholders during bilateral meetings:

- Some stakeholders felt that consulting on a very small increase in the PCF would be of limited value.
- Publishing an account of what the expenditure of PCF income achieved in the previous year may be problematic in terms of timing as it would need to link to the annual report (which may relate to expenditure which is over two years old).
- A few stakeholders asked if they would be expected to consult on a PCF increase if the increase was as result of an increase in the LSB levy.

### **Discussion (15 mins)**

What do you think about these points?  
Do you have any other views?

# Key themes and initial working proposals

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## Key theme

### Addressing areas for improvement

Some approved regulators regularly fail to address issues or specific points of improvement identified in previous PCF decisions despite the Guidance reinforcing the need for this.

#### Initial working proposal

- To make clear on the face of our Rules that we will be rigorous in our follow up of issues identified in the decision notice for the previous year.

# Key themes and initial working proposals

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## Key theme

## Addressing areas for improvement

### Key points made by stakeholders during initial meetings:

- Need clarity on the types of issues which could lead to refusal.
- LSB should make clear when it expects issues to be remedied.

### **Discussion (10 mins)**

What do you think about these points?  
Do you have any other views?

# Key themes and initial working proposals

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## Key theme

### Interim measures to collect limited PCF

The LSB has not to date, refused a PCF application. The existing Rules set out the process if a PCF application is refused and note that the LSB may specify the circumstances in which we would permit the approved regulator to charge a PCF under its regulatory arrangements as an interim measure pending consideration and approval of its full application. However, neither the Rules of Guidance, specify what these circumstances are.

## Initial working proposal

- In discussion with approved regulators and regulatory bodies, we propose to specify the circumstances in which the Rules allow for collection of a limited PCF as an interim measure if the LSB refuses the PCF application or a component of it, pending resubmission or appeal of their application.

# Key themes and initial working proposals

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## Key theme

### Interim measures to collect limited PCF

#### Key points made by stakeholders during bilateral meetings:

- All stakeholders considered partial collection of PCF pending approval and then (assuming full approval) a second later collection would be costly and cause reputational damage.

**Discussion (10 mins)**  
Do you have any other views?

## 5. Next steps



# Next Steps

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- We will consider all responses provided at the initial bilateral meetings and at the workshops to further develop our proposals.
- We propose to conduct a soft consultation once our proposals are more fully developed and have been discussed internally, with the aim of publishing our formal consultation in June 2020.
- Any questions?

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