



**Approval of 2020 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 approved an application made by the Council for Licensed Conveyancers 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.
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 Practising Fee Rules 2016 (Rules)<sup>1</sup>. The Rules<sup>2</sup> set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](#) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application<sup>3</sup>.
5. This notice sets out the decision taken, including an assessment of the PCF application.

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<sup>1</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_Practising\\_Fee\\_Rules\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF)

<sup>2</sup> Ibid, Rules 10 and 11.

<sup>3</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_PCF\\_Rules\\_Guidance\\_June\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF)

## Overview of PCF application and decision

6. The CLC PCF application submitted to the LSB, provides that Licence Fee and Practice Fee levels are unchanged for the for the CLC's 2020/21 PCF year, which runs from November 2020 to October 2021. The proposed fee levels are as follows:

- Licence Fees payable by CLC lawyers providing conveyancing services or probate services remain at £400 for 2020/21.
- Licence Fees payable by CLC lawyers providing conveyancing services and probate services remain at £475 for 2020/21.
- Practice Fees payable by CLC regulated practices continue to be based upon a percentage of turnover, subject to a minimum fixed fee. The proposed 2020/21 Practice Fee rates are set out in the table below.

Turnover Banding	Practice Fee payable		
£0 – £100,000	£539	or	0.77% of turnover (whichever is greater)
£100,001 – £500,000	£770	plus	0.70% of turnover in excess of £100,000
£500,001 – £3,000,000	£3,570	plus	0.63% of turnover in excess of £500,000
£3,000,001 and over	£19,320	plus	0.56% of turnover in excess of £3,000,000

7. The projected total funding requirement for 2021 is £2,992,141, compared to £3,048,041 forecast outturn for 2020. It is expected that £1,582,459 will be collected from Practice Fees charged to firms and £572,283 will be collected from Licence Fees charged to individuals. Taken with other income (£37,542), there is be a total projected income of £2,192,284. This will mean a projected shortfall of income against expenditure of £851,450, which will be funded from accumulated reserves.
8. The LSB's decision is to approve in full the levels of the 2020/21 Licence Fees charged to individuals and Practice Fees charged to firms set out in the CLC's application. The fee rates will come into effect from 1 November 2020.

## LSB assessment

### Development of the overall budget and application

#### *Clarity and transparency of overall budget setting*

9. The CLC's budget year runs from January to December and the formal budget for 2021 will be presented to the CLC Council for approval in January 2021. It has provided the LSB with a projection of operational expenditure for 2021 based on the 2020 forecast. Any variance between the figures for 2020 and 2021 is set out and an explanation is provided where changes are more significant.

10. The application provides a detailed description of the CLC's approach to budget setting and budget management. The CLC develops its budget based on:
  - resource needed to deliver strategic priorities and business plan objectives
  - workforce costs (staff; contingent labour) and service/supplier costs
  - levies required by the LSB and the Legal Ombudsman
  - known exceptional and ad hoc items.
11. The CLC's current fee structure for PCF has been in place since 2010. The Licence Fee payable by individuals is a fixed sum and the Practice Fee payable by each firm is based upon a percentage of turnover, subject to a minimum fixed fee.
12. In our decision on last year's PCF application, we set out our expectation for the 2020 PCF application to include details of the CLC's review of the range and number of fee bandings for practices (an exercise which was referenced in its consideration of 2019 consultation responses). The application explains that this review has been deferred, mainly due to reprioritisation linked to the impact of COVID-19, but that consideration of fee bandings remains something the CLC has committed to in its business plan.
13. Given that it is some time since the CLC last reviewed its bandings, we view it as important that this work is progressed in advance of the next application. We will expect the CLC to report to us on this review and the outcomes of it.

*Evidence that immediate and medium-term needs have been taken into account*

14. The application sets out challenges for the CLC in conducting financial planning for the next financial year owing to the immediate challenges for the housing industry and CLC regulated practices in the face of the coronavirus pandemic and uncertainties around the longer-term impact. For example, the possible impact on turnover of practices, the possibility of closure of firms and in turn, the effect on CLC revenues.
15. The CLC's proposal to keep fees for 2020/21 at current levels was driven by those uncertainties described above, combined with uncertainties related to the UK's exit from the EU and increases in levies that the CLC is required to pay. Further, the CLC is in year four of its planned reduction in accumulated reserves (see paragraphs 19-20) and given the uncertainties it seeks to reduce the risk of the minimum reserve amount being reached far in advance of its plan.
16. In developing its fee proposals for 2020/21, the CLC assessed the likely impact of increasing or decreasing fees in the current climate. The CLC considered that an increase in fees now would have a detrimental impact on practices, which are already suffering from the loss of business and would also increase the likelihood of volatility of fee rates when the current crisis stabilises. The CLC considered that decreasing fees, while providing some relief to practices, would put the organisation at risk of increased operating deficits and put downward pressure on reserve levels, which despite the large reserves it currently has, would not be prudent in the current circumstances.

17. There are some cost savings in 2021 budget which relate to activities in 2020 that will not be repeated in 2021, namely some research and legal and professional fees for one-off engagements in 2020. Staff costs are also reduced as a vacancy factor for unfilled posts has been applied to the 2021 budget. We understand from follow-up enquiries with the CLC that the posts are not being filled as a cautionary cost saving measure arising from the likelihood that Practice Fee income will decrease in 2020 to 2022 attributed to the impact of COVID-19. Other costs are set to increase, but only relative to the COVID-depressed figures in the 2020 forecast.
18. The CLC's policy is to maintain a minimum reserve for operations of £1 million, which is equivalent to six months essential operating expenses. We noted that £1 million appears to be significantly less than six months of operating expenditure against the current cost base of £2.992 million. In response to our enquiry, the CLC advised that should it find itself in a scenario where the minimum reserve would be used, expenditure would strictly be essential operating expenditure. Recharges and discretionary expenditure (marketing and travel) would be curtailed immediately. Excluding these costs would reduce the six-month operating expenditure to fit within the reserve level. Therefore it has confirmed that £1 million is its longer-term target level of reserves, representing six months of essential operating expenditure.
19. At the end of 2019, reserves stood at £3.97 million. Outturn for the year was £2.935 million, so reserves were 1.35 times annual gross expenditure, equivalent to more than 16 months of cover. The size of the accumulated reserves and the CLC's progress and pace in reducing its level of reserves is a matter which we commented on in our decision for the 2019 PCF application.
20. The CLC is currently running a managed deficit on the Practice Fund to bring about a reduction in the reserves held by the Fund. The deficits are on a significant scale: £856,000 in 2020 and £851,000 in 2021. By December 2021, the retained surplus is forecast to have reduced to £2.26 million. Whilst still some way above its longer-term target of £1 million, with outturn for 2021 forecast to be £2.992 million, reserves will then represent nine months of total expenditure. This is a much healthier multiple than the current one.
21. In our decision on the 2019 PCF application, we noted that there remains a question as to whether the pace of the reduction in levels of reserves is sufficient and communicated our expectation for the CLC to keep this question under close review, and for progress to be reported to LSB in the context of future PCF applications. We recognise that the projections for this application are to achieve significant reductions in the reserves this year, and in future years, to bring accumulated reserves back within the CLC's target level. Whilst it is of concern that the CLC does not expect to have achieved its target level until 2025, we recognise that the specific circumstances of this year make significant changes higher risk than they would normally be. The pace of reduction needs to be kept under careful and ongoing review.
22. The level of reserves accumulated remains significantly outside the parameters of the CLC's reserves policy and this, on the face of it, presents concerns about CLC's performance in relation to outcome WL2 under the Well-led standard of our regulatory

performance framework<sup>4</sup>. It is for this reason that it is important that CLC continues to demonstrate a clear plan, and actual progress against it, to remedy the significant imbalance in the near future. We will continue to monitor the CLC's management of reserves and the position in relation to its target level of reserves through our regulatory performance framework as well as through annual PCF applications.

### Consultation on PCF

23. The CLC published its consultation on the proposed Licence and Practice Fee arrangements in June 2020. The consultation closed on 3 July 2020. The application notes that the CLC circulated two newsletters in relation to the consultation.
24. The consultation received no responses. The CLC believes this is likely due to two factors. Firstly, the consultation period coincided with a time when practices were beginning to reopen following the government imposed 'lockdown' in March 2020. At this time, staff at practices remained on the government's furlough scheme. The second likely reason for the consultation receiving no responses, according to the CLC, is because fee levels are to be unchanged for 2020/21.
25. The application notes that the CLC has surveyed the profession seven times since March 2020 to understand the impact of Covid-19. A number of respondents in the first three surveys expressed concerns about their ability to continue paying regulatory fees during the lockdown. These responses formed part of the CLC's decision to introduce a regulatory fee deferral scheme in April 2020, which enabled practices to defer payment of their Practice Fee and Compensation Fund contributions for April, May and June 2020 and repay the deferred fees over either four or 12 months, starting in July 2020. The application notes that no similar comments were made about fees in surveys that were conducted post-introduction of the scheme.
26. Whilst we recognise the specific challenges this year and accept the CLC's wider engagement on related matters as an acceptable approach in the circumstances, we will expect the CLC to be able to demonstrate meaningful and effective consultation when it applies for approval for its PCF next year. This may require targeted work beyond simply publishing a consultation on the CLC's website.

### Permitted purposes

#### *Allocation to permitted purposes*

27. The application explains that all the CLC's income from PCF is used to undertake permitted purposes covered within the scope of section 51(4)(a) of the Act.
28. The application further outlines that the CLC has solely regulatory functions and no representative functions. As a result, aside from levies, all PCF income generated by the CLC covers the regulation, accreditation, education and training of applicable

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<sup>4</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/07/Revised-regulatory-performance-standards-framework-chart-July-2020.pdf>

persons, maintaining and raising of professional standards and practical support and advice about practice management in relation to practices.

29. While all of the CLC's spend is allocated to permitted purposes, future PCF applications would benefit from estimates on the allocation of PCF to specific areas of work or initiatives under section 51(4)(a).

#### *Other income allocated to permitted purposes*

30. The total projected income for 2020 assumes other income of £34,164, which we understand from our enquiries on the 2019 application is largely made up of application fees and interest. Future PCF applications should include a brief explanation of what is included under the 'other income' heading.

#### *LSB targeted review*

31. In our 2019/20 Business Plan<sup>5</sup> we set out an intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.
32. Having engaged closely with approved regulators and their regulatory bodies, including the CLC, the LSB published a consultation on the draft new Practising Fee Rules and Guidance on 30 July 2020. We look forward to receiving the CLC's response to the consultation.

#### Transparency of PCF information to fee paying members

##### *Clarity of information provided*

33. The CLC provides information to the profession on regulatory charges. The structure and format of the publication is consistent with previous years. The information to the profession will be issued to fee payers upon LSB approval.

#### Regulatory and Equality Impact assessment

34. The CLC's application provides comments on the applicability of the regulatory objectives, the ways in which it has taken into account the better regulation principles and references that the CLC seeks to ensure fees charged are determined on a fair basis. The CLC has not carried out a regulatory and/or equality impact assessment, mainly because it is proposing that Practice Fee rates remain unchanged for 2020/21.
35. The LSB considers that while the CLC is proposing to keep fees levels the same, there have been significant changes for the CLC's regulated community in recent months, attributed to the economic impact of COVID-19. Indeed, the CLC reflected on the uncertainties faced by its regulated community in the course of developing its budget. The application would have benefited from a full equality impact assessment

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<sup>5</sup> [https://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/2019/Final\\_business\\_plan\\_2019-20.pdf](https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf)

22 September 2020

on account of these changes. There will be an even stronger case for this next year, when the impacts of COVID-19 on the sector have further materialised and so we will expect the CLC's application next year to demonstrate a meaningful impact assessment of its proposals.

36. It should be noted that proposals on the LSB's future expectations in respect of equality impact assessments are set out in our consultation on the draft new Practising Fee Rules. The draft Rules provide a greater focus on the importance of equality and regulatory impact assessments in future PCF applications. All approved regulators and regulatory bodies will be required to comply with these Rules when they are finalised following consultation.

### **Decision**

37. The LSB has approved the PCF application submitted by the CLC for 2020/21 under section 51 of the Act.

### **Summary of expectations for next application**

38. This decision notice sets out the following specific expectations for the application next year:

- The CLC to progress its review into the range and number of bandings for practices in advance of the next application. (Paragraph 13)
- The CLC to continue to demonstrate a clear plan, along with actual progress, to reduce the imbalance between its actual accumulated reserves and the target level set out in its policy, in the near future (Paragraph 22)
- The CLC to be able to demonstrate meaningful and effective consultation. This may require targeted work beyond simply publishing a consultation on the CLC's website. (Paragraph 26)
- The CLC to provide estimates on the allocation of PCF to specific areas of work under section 51(4)(a). (Paragraph 29)
- The CLC to provide a brief explanation of what is included under the 'other income' heading in its income and expenditure summary table. (Paragraph 30).
- The CLC to demonstrate a meaningful impact assessment of its proposals. (Paragraph 35)

**Matthew Hill, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board**

**22 September 2020**