

BY EMAIL



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Matthew Downton  
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28 September 2020

Dear Matthew,

### **Section 51 Application – ICAEW 2021 probate firm registration fees**

I am writing in relation to concerns that we have regarding the information that you have provided in your Section 51 Practising Fee application, along with the follow up information provided on 21 September. As a result, we have not yet been able to fully assess the application against the relevant rules.

Given that we have encountered similar challenges in previous years, I thought it might be helpful to start by explaining why we undertake this role and why it is important that applications contain the necessary information required to properly assessed the proposed fees. I know that these themes have also been discussed recently at various workshops and meetings in relation to our current consultation on updating our Practising Fee Rules.

The approval of regulatory fees is one of the LSB's core statutory functions. It is a role entrusted to us by Parliament to carry out on behalf of the public. It provides important checks and balances in a system in which the payment of fees is effectively mandatory for many individuals and businesses. It creates a mechanism of accountability to ensure as far as possible that fees are set responsibly and that the right balance is struck between the burden on the feepayer and the needs of public confidence on the other. It is a role we take seriously.

The Legal Services Act sets out that practising fees are payable only if the LSB has approved the level of the fee. The [Practising Fee Rules 2016](#) and in particular Rules 10 and 11 prescribe the criteria and evidence to be provided by applicants, against which the LSB will consider applications for approval. For ease of reference the assessment criteria and evidence are set out in an Annex to this letter.

In addition to the above, we have been clear that we see the way in which the regulators manage their resources as a key indicator of how Well-led they are. It is for this reason that our regulatory performance framework includes the outcome WL2, which states: *"The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its*

*regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented).”*

As you will recall, we spent a considerable amount of time last year in discussion with ICAEW in order to reach a position where ICAEW was able to submit an application that the LSB was content to accept. In the end, and as communicated to you in an email from Steve Violet on 11 October 2019, we concluded that we would be willing to accept an application that might not ordinarily meet our expectations. This willingness on the part of the LSB was predicated on the requirement that the 2021 application would contain the required detail. Whilst we were ultimately able to approve the application last year, we set out five expectations of ICAEW, to ensure that the next application contained the information required to enable us to fully consider it and to assess it against our Practising Fee Rules and guidance.

We have reviewed the current application and the answers provided to questions we have posed during the assessment, along with the expectations set in last year’s decision. At this stage, there remain some significant gaps which mean that we do not feel able to fully consider and conduct an assessment against all of the applicable requirements under the Practising Fee Rules.

Of particular concern is the following:

- a) Neither the application nor the additional information supplied adequately address the five expectations set out in last year’s [decision](#). In particular:
  - i. We are left without a clear or compelling explanation of why ICAEW concluded that impact assessments were not considered appropriate for the application this year, or indeed in previous years (Rule 11(g)). Whilst you have explained that your consultation included a question on impact, providing this facility falls some way short of taking responsibility for determining the impact of the current level and structure of fees on those who pay it and, crucially, identifying whether there are any differential impacts on particular groups or those with particular characteristics.
  - ii. We do not consider the information supplied to date provides us with evidence that the medium-term priorities for ICAEW, and their associated costs, have been taken into account in setting the budget (Rule 10(b)). In relation to the latter, the information provided so far amounts to little more than a restatement of the regulatory objectives, which does not provide any meaningful information on how the money collected through the PCF will be spent.
  
- b) We are not currently able to assess whether probate firm registration fees will be sufficient to fund the costs of probate regulation and will therefore produce enough income to allow ICAEW to carry out its regulatory function to the standard expected by the LSB under our regulatory performance framework, without ongoing subsidies. This information is crucial to our assessment of whether the PCF is set at an appropriate level, specifically when considering medium term needs (Rule 10(b)). In particular, the application sets out that set up costs are still in the process of being returned. In response to our further enquiries, you have explained these set up funds are payable to the accountancy regulatory function within the PSD. You have explained that ‘around £100,000’ is still owed and that further costs associated with complying with your obligations may mean that time taken to repay this deficit will increase. To properly understand the relevance of the money owed to the PSD, we require further information, as set out below.

In addition to the PCF application and approval process, we have made it clear to ICAEW through [the 2019 performance assessment review](#) that the quality of the ICAEW’s rule change and PCF applications do not meet the standards required and that remedial action is required. The actions required of the ICAEW are set out in the assessment that was published in December 2019. This current application suggests that ICAEW has not implemented the steps required to improve the standard of applications to the LSB on a consistent basis. This is particularly concerning in

circumstances where we set clear expectations in our 2019 decision notice and also reiterated these when providing feedback on the draft application. We will consider this further in our forthcoming performance review of the ICAEW's progress against this and other unmet outcomes in the performance framework.

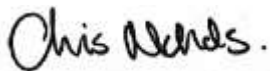
While our assessment is not subject to a statutory timeframe it is of course necessary that our assessment is complete in time for ICAEW to collect fees from its regulatory community aligned with its January 1<sup>st</sup> renewal date. We ask that you provide us with additional material that will provide us with the detail needed to fully consider and assess the application by **12 October 2020**. This should include, as a minimum, the following:

- details of the costs associated with ICAEW's main activities and specific strategic priorities, in the medium term
- full details of the set-up costs owed to the accountancy regulatory function within the PSD along with plans to repay and an expected timeframe
- confirmation of the reason full impact assessments were not considered appropriate, an explanation of the last time that an impact assessment was carried out on regulatory fees and explanation of whether ICAEW has plans to conduct an impact assessment in the near future.

To be clear, without the additional information, at this stage we are unable to complete our assessment or approve the application.

I am copying this letter to Duncan Wiggetts and Peter James for information.

Yours sincerely,



**Chris Nichols**

Director, Policy and Regulation

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## Annex – Practising Fee Rules Rule 10 & LSB Assessment

The [Practising Fee Rules 2016](#) set out at Rule 9(c) that the Board will set out from time to time the criteria against which the Board will decide on applications put to it; and at Rule 9(d) the evidence required by the Board to satisfy itself against the agreed criteria.

The criteria is set out in Rule 10 as follows:

- a) compatibility with the regulatory objectives
- b) evidence which demonstrates that reasonable care was taken in settling the application in the context of the budget necessary for the immediate and medium term;
- c) evidence which demonstrates that the revenue raised through the practising fee charge will be applied solely to purposes which are permitted purposes;
- d) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions;
- e) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions;
- f) for the purposes of enabling the LSB to assess the impact on the proposed practising fee, provide clarity and transparency on the allocation of all the approved regulator's financial resources, whether or not those resources arise from permitted purposes; and
- g) evidence that persons paying practising fees will have explained to them how revenue raised through the charging of practising fees will be applied as between the approved regulator's performance of regulatory functions and any other functions also carried on by the approved regulator.

The evidence is set out in Rule 11 as follows:

- a) a description of how the application was developed and settled, including any consultation carried out, whether or not such consultation was required by the Board;
- b) where there is a proposed increase in practising fees, the budget should show anticipated income from all sources and its allocation to the permitted purposes for the current application and, where available, the next three years;
- c) the proposed practising fees for the current application and, where there is a proposed increase in practising fees and where available, the estimates for the next three years;
- d) an explanation of how the cost to each regulated person is to be broken down as between income to be allocated to the discharge of regulatory functions and income allocated to any other functions;
- e) an explanation of contingency arrangements where unexpected regulatory needs arises in-year;
- f) evidence of how the previous year's practising fee income was allocated only to permitted purposes; and

g) a regulatory and diversity impact assessment.

In addition to the rules the LSB has produced [guidance](#) that provides some additional information on the criteria and evidence required.