



Approval of 2021 Practising Certificate Fee (PCF) application made by the Institute of Chartered Accountants in England and Wales (ICAEW) 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 ICAEW 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.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)¹. The Rules² 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 application³.
5. This notice sets out the decision taken, including an assessment of the PCF application.

Overview of PCF application and decision

6. As explained in previous decisions, the ICAEW probate fee is a "practising fee" within section 51 of the Act since payment is a condition which must be satisfied for the regulated person to be authorised by the approved regulator. Consequently, the probate fee is referred to as a PCF throughout this decision.

¹ https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF

² Ibid, Rules 10 and 11.

³ https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF

7. The ICAEW PCF application for the approval of practising fees for 2021 sets out a proposal for the probate firm registration fee for ICAEW annual registration to remain static. The proposed fee levels are set out in the tables below.

Authorised Firms

Number of principals and authorised individuals plus probate affiliates	1 office	2-10 offices	11+ offices
1	£357	£622	£1,092
2-5	£622	£1,092	£1,918
6-9	£1,092	£1,918	£3,366
10-50	£1,918	£3,366	£5,906
51+	£3,836	£6,733	£11,813

Licensed Firms

Number of principals and authorised individuals plus probate affiliates	1 office	2-10 offices	11+ offices
1	£357	£622	£1,092
2-5	£1,244	£3,274	£7,671
6-9	£2,183	£5,753	£13,465
10-50	£3,836	£10,099	£23,626
51+	£7,671	£20,198	£47,251

8. The PCF is expected to result in a PCF income of £501,000 for 2021. This is an increase of £17,000 when compared to the forecast for 2020.
9. The LSB's decision is to approve in full the levels of the 2021 PCF as set out in the ICAEW application.

LSB assessment

Summary

10. Our assessment of this application was significantly impacted by the fact that from ICAEW's initial application, it was clear that it had not meaningfully engaged with the feedback and expectations that the LSB set out in last year's decision.

11. During the course of the LSB assessment further information was requested to enable a full assessment of the application. This included correspondence⁴ sent to ICAEW on 28 September requesting:
- details of the costs of ICAEW's main activities and 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.
12. Further information was provided by ICAEW and incorporated into an amended application⁵ provided on 12 October 2020. As a result of the issues faced in assessing the initial application, this decision has been significantly delayed.

The application

13. As set out at Paragraph 3 above, the Legal Services Act sets out that practising fees are payable only if the LSB has approved the level of the fee. The application received from ICAEW contained significant information gaps which meant we were not initially in a position to fully consider and conduct an assessment of the application against all of the applicable criteria under the Practising Fee Rules.
14. The way in which the regulators manage their resources is a key indicator of how well-led they are. It is for this reason that our regulatory performance framework includes the outcome WL2⁶. We must be able to properly assess applications in order to understand how regulators are managing their resources.
15. At its most recent performance assessment we rated ICAEW as 'not met – action being taken' in relation to the outcome RA2⁷. This related largely to issues with ICAEW engagement with the LSB rule approval process. We explained that we expected ICAEW to take action to ensure future rule change and PCF applications were complete and all quality issues addressed prior to submission.
16. We expect ICAEW to ensure that future applications reflect the expectations set in our decisions and comply fully with the applicable PCF rules prior to submission.
17. We are in the process of updating regulatory performance assessments of each of the regulatory bodies and will consider whether our current ratings for ICAEW in relation to each of the performance outcomes, including those mentioned above, remain appropriate given the issues encountered through our assessment of this application.

⁴ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/10/20200928-CN-to-MD-ICAEW.pdf>

⁵ https://www.legalservicesboard.org.uk/wp-content/uploads/2020/10/ICAEW-PCF_proforma-submission-September-2020-for-2021.pdf

⁶ 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).

⁷ So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.

Development of the overall budget and application

Evidence that the regulatory body has led the development of the application

18. The ICAEW application confirms that the probate budget is prepared by its Professional Standards Department which is ICAEW's regulatory arm. It also confirms that the budget is not impacted by the representative arm.
19. We are therefore satisfied from the information provided in the application that the regulatory body has led the development of the budget and application.

Clarity and transparency of overall budget setting

20. The LSB is satisfied with the budget setting process outlined in the application. The application states that the probate budget is set as part of a detailed process which includes a regularly updated 18-month rolling forecast.
21. The level and value of shared services are discussed and agreed as part of the budget setting process. The process also assumes a relatively static number of registrants.
22. The ICAEW Regulatory Board has discussed and agreed the proposed budget. The application included broad details of forecast costs for 2021 along with commentary setting out the reason for any notable variance with the 2020 budget.
23. The budget provides for a small surplus which amounted to £15,000 in 2019 and is projected to be £17,000 for 2020. The ICAEW application explains that the surplus is used to return set-up costs over time.
24. We asked ICAEW about set-up costs during the course of the application. It stated that the initial set up costs of the Probate function were around £170,000. These were borrowed from ICAEW's Professional Standards Department (PSD), which is the department responsible for carrying out ICAEW's regulatory and disciplinary roles. By the end of 2020 it is expected that £70,000 will have been returned to the PSD. ICAEW currently plans to repay the remaining £100,000 at a steady rate expected to be around £17,000 per year.
25. ICAEW are currently estimating that further costs may be incurred in complying with the new IGRs. It estimated that any additional costs would increase the time period to clear set up costs by a maximum of two years.
26. We expect future applications to provide an update on the level of set-up costs still to be repaid and an estimate for the time period it will take to reduce them to have paid back all of the costs.

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

27. In last year's decision we set an expectation that in future applications ICAEW should provide additional information on its strategic priorities in the medium term and any associated costs of pursuing these.

28. The application we received pointed us to Paragraph 29 of the application for an explanation of strategic priorities. This simply provided a list of the regulatory objectives and references to the better regulation principles. We did not consider this to sufficient to demonstrate that medium term needs had been taken into account.
29. As set out above, we wrote to ICAEW to set out our concern on this area during the course of our assessment. ICAEW responded providing us with estimates of the proportion of PCF taken up by its various activities. This additional information has provided some assurance as to how ICAEW allocates the PCF.
30. In future applications we expect ICAEW not only to provide an estimate of the proportion of PCF allocated to various activities but to also set out more clearly what its strategic priorities and proposed activities are for the coming years.

Reserves arrangements

31. In last year's decision we explained that a delineation of the reserves relating to ICAEW's Probate arm from the wider ICAEW reserves would assist us in understanding whether its reserves arrangements were sufficient.
32. The application confirms that ICAEW's probate reserves are operationally delineated from the wider reserves, however it may not be possible to represent them within ICAEW's reported accounts.
33. The application states that the reserves allocated to the Probate arm are identified as approximately £100,000.
34. The reserves policy articulated in ICAEW's financial statements for 2018 confirms that reserves should be set at a level equivalent to between 3 and 6 months expenditure. ICAEW has confirmed that it is satisfied it holds 3 months expenditure for its probate function.

Consultation on PCF

Summary

35. In last year's decision we set out an expectation for ICAEW to consider using its PCF consultation as an opportunity to communicate with the profession on the benefits and purpose of regulation. We suggested that ICAEW may be able to enhance the engagement of the profession by asking additional questions through PCF consultations in the future.
36. The application stated that ICAEW had carefully considered other avenues of engaging with the profession. It explained that there were communications with firms on a range of topics.
37. ICAEW did not expand its consultation on PCF and did not make use of the opportunity to engage with its community on the benefits and purpose of regulation.

The application explained that it disagreed with the LSB view that a lack of responses may indicate a lack of engagement.

38. With its July 2019 newsletter, ICAEW issued a consultation on a proposed PCF increase. The consultation was open until 31 August and received two responses. ICAEW explained that the low response rate was due to the fact the proposed change was minor and attention was elsewhere as a result of Covid-19.
39. The consultation asked whether respondents agreed with the proposed 2021 PCF increase of 1% and whether it would impact them.
40. Whilst we recognise the specific challenges this year and accept that a low response rate may be partly due to Covid-19, we will expect ICAEW 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 within an emailed newsletter.

Consultation responses and consideration of responses

41. The application states that one respondent stated an increase would impact them due to the fee pressure firms are under, but the other did not consider it would impact them.
42. ICAEW considered the consultation responses and the wider Covid-19 impacted environment. Despite consulting on a small increase it concluded that there would be no increase this year.
43. During our engagement with ICAEW we asked how the decision not to increase was documented. ICAEW explained that the approach to fees was discussed with the ICAEW Regulatory Board and the final budget proposal was signed off at its October meeting.
44. In future years we expect ICAEW to issue a decision document following consultation. The decision document should explain how consultation responses were considered and set out the final decision made by ICAEW in relation to PCF for the coming year.

Permitted purposes

Allocation to permitted purposes

45. All PCF income received by ICAEW is used to undertake permitted purposes. The application outlines a high-level breakdown of the estimated proportion of expenditure allocated to each permitted purpose activity. As a result, aside from levies, all PCF income generated by ICAEW covers:
 - staff and overheads
 - legal, research, insurance
 - quality assurance travel
 - committee costs
 - general office costs

- print, design and advertising

46. During the application ICAEW also confirmed an estimate for the proportion of PCF allocated to the main activities undertaken by ICAEW as follows:

- regulatory policy and engagement 34%
- registration and supervision 31%
- discipline 10%
- governance 11%
- education and research 14%

LSB targeted review

47. In our 2019/20 Business Plan⁸ 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.

48. Having engaged closely with approved regulators and their regulatory bodies, including ICAEW, the LSB published a consultation on the new draft practising rules and guidance on 30 July 2020. We have now received ICAEW's response to the consultation and will be analysing it along with other responses before finalising our rules and guidance.

Transparency of PCF information to fee paying members

Clarity of information provided

49. In last year's decision we stated that ICAEW must ensure that its communication on fees includes all the minimum requirements set out in the LSB's rules and guidance. This must include an accurate presentation and representation of the LSB and Office for Legal Complaints levies.

50. The 2020 document that ICAEW issued set out that the cost of the LSB was a minor cost of around 1.8% of the probate fee. However, it made no reference to the Office for Legal Complaints Levy.

51. It is of concern that ICAEW did not follow the very clear instruction set in last year's decision. We expect this to be remedied in this year's communication. In the meantime, we will also be following this up through our next regulatory performance assessment.

Regulatory and Equality Impact assessment

52. In last year's decision we set an expectation for ICAEW to undertake a more meaningful assessment to support its next application, or to provide a more detailed explanation as to why such assessment is not deemed necessary.

⁸ https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf

53. In its application ICAEW explained that due regard had been given to regulatory and equality and diversity impact assessments and no further work beyond the fee consultation and extensive diversity survey was planned for 2021.
54. The letter sent to ICAEW during our assessment, referenced at paragraph 11 above, set out that we were left without a clear or compelling reason why ICAEW concluded that impact assessments were not considered appropriate. We explained that asking a consultation question on impact 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.
55. ICAEW stated that it included an introduction focused on Covid-19 to the application to illustrate that ICAEW had understood, and given careful consideration to, the major events of 2020. It further explained that it had considered the impact across the range, size, location, industry of its firms and, as a result had concluded there should be no fee increase to any grouping.
56. Despite the further engagement during our assessment, ICAEW has not been able to demonstrate its consideration to differential impacts on particular groups or those with particular characteristics. This is relevant to ICAEW's performance in relation to our regulatory performance outcomes, in particular RA5⁹. As already noted above, we are currently conducting an assessment of all regulatory bodies' performance against our framework and this evidence will be factored into our assessment of ICAEW.
57. 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

58. The LSB has approved the PCF application submitted by ICAEW for 2021 under section 51 of the Act.

Summary of expectations for next application

- ICAEW to ensure that future applications reflect the expectations set in our decisions and comply fully with the applicable PCF rules prior to submission. (Paragraph 16)
- ICAEW to provide an update on the level of set-up costs still to be repaid and an estimate for the time period it will take to reduce them to have paid back all of the costs. (Paragraph 26)
- ICAEW to provide an estimate of the proportion of PCF allocated to various activities and to set out more clearly what its strategic priorities and proposed activities are for the coming years. (Paragraph 30)

⁹ The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives.

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- ICAEW 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 within an emailed newsletter. (Paragraph 40)
- ICAEW to issue a decision document following consultation. The decision document should explain how consultation responses were considered and set out the final decision made by ICAEW in relation to PCF for the coming year. (Paragraph 44)
- ICAEW must ensure its communication on fees includes all the minimum requirements set out in the LSB's rules and guidance. This must include an accurate presentation and representation of the LSB and Office for Legal Complaints levies. (Paragraph 51)
- LSB's future expectations in respect of equality impact assessments are set out in our consultation on the draft new Practising Fee Rules. All approved regulators and regulatory bodies will be required to comply with these Rules when they are finalised following consultation. (Paragraph 57)

Matthew Hill, Chief Executive

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

20 October 2020