



Approval of 2021 Practising Certificate Fee (PCF) application made by the Cost Lawyers Standards Board (CLSB) 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 Cost Lawyers Standards Board (“**CLSB**”) 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. The CLSB PCF application for the approval of practising fees for 2021, sets out that the PCF for Costs Lawyers will remain static at £275 for 2021.
7. The proposed PCF level is expected to result in a PCF income of £182,875 for 2021. This is based on the estimation that there are 665 regulated Costs Lawyers.

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

8. The LSB's decision is to approve in full the levels of the 2021 fee determinations for practising certificates charged to individual Cost Lawyers as set out in the CLSB application for the approval of 2021 fees.

LSB assessment

Development of the overall budget and application

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

9. The CLSB has no representative function. The CLSB's income and expenditure are entirely separate from the income and expenditure of the representative body (ACL). ACL, both as an Association and through its individual members, was however invited to provide feedback on the budget through the PCF consultation.
10. We are 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

11. The budget setting process is well-documented. The annual budget for the CLSB is relatively small, but considerable thought has been put into its construction. Fixed costs are identified first, then known or assumed variable costs, then projects to be undertaken. Essentially, the budget follows the activities outlined in the business plan, which is a logical approach. Flexibility is built into the budget by including a flexible staff provision and a £5k contingency. £10k is set aside for transfer to reserves.
12. Income is almost exclusively derived from the PCF. A balanced budget has been set, with income virtually equal to annual expenditure. This is based on an assumed register of 665 lawyers at £275.
13. The CLSB asserts that it has been given sufficient funds to carry out its regulatory functions. These relate wholly to permitted purposes, and a breakdown of costs by category of permitted purposes is detailed in the application.
14. For 2021, the assumed number of costs lawyers has been estimated at 665. The application acknowledges that this is a conservative estimate.
15. The CLSB collects funds in December used in the year to follow. During the course of considering the application, we asked the CLSB whether they could provide further clarification about how resources are deployed. In its response the CLSB provided the following clarifications:
 - actual income is assessed against its budgeted income at the end of January, which is when the Register for the new practising year is updated. Planned expenditure is then amended accordingly if actual income is substantially different to budgeted income

- CLSB uses a bookkeeping ledger to track expenditure throughout the year in real time. This is considered by its CEO on a monthly basis and it is reported to the board on a quarterly basis
- in the course of quarterly reporting, CLSB considers and addresses any areas of under- or over-spend between (i) budgeted expenditure against actual expenditure and (ii) budgeted expenditure against a current expenditure projection to year end. This is considered by the CLSB an equivalent of a cashflow statement.

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

16. The CLSB's new three-year strategy began in 2020 and its application confirms its strategic goals for the time period. The application further explains how its annual priorities for 2021 are set to achieve its wider strategic objectives.
17. We note that while the CLSB budget does not provide for an increase, the way in which resources are deployed does provide some additional resourcing and resilience in practice, when compared to previous years. However, the LSB continues to be concerned about whether the CLSB has sufficient resources and scale in the longer-term to be able to demonstrate that it can meet the outcomes and standards that we expect of well performing regulators. The CLSB is currently undergoing a programme of improvement to address previous performance issues identified by the LSB and we are concerned that the planned resourcing may prove to be insufficient for the CLSB to continue the progress the CLSB has made towards meeting our regulatory performance standards in a timely manner.
18. CLSB has made arguments to us to the effect that because costs lawyers may practise without being regulated, increasing fees may drive some practitioners to leave the regulated space altogether. While we recognise and understand this argument, it remains a source of concern to us that a regulator's discretion may be fettered in this way. This is a matter we are likely to take forward into broader considerations of the regulatory framework.
19. In addition whilst the CLSB has built a measure of flexibility into its budget, we consider that there is limited scope for further scaling back its expenditure and resources if registrants are significantly reduced, for example as a result of risks associated with the Covid-19 pandemic. We will be monitoring this situation closely.
20. We expect the CLSB to keep the LSB informed of significant developments in relation to its resourcing. We have set out in our latest performance assessment that the CLSB is to submit an update on progress by March 2021 which will include details on progress made as regards its 2021 Business plan priority for modernising the CLSB. In an event that resources or capacity impact on the CLSB's longer-term performance outlook, we will expect to be provided with insights from any CLSB board discussion along with agreed plans and mitigations.

Reserves arrangements

21. In our decision issued on 23 October 2019 we set an expectation that by the time of this year's application that the CLSB would have updated its reserves policy. The CLSB confirmed in its application that the policy was updated in January 2020 and provided a copy of the policy as an annex to the application.
22. The CLSB has a policy of maintaining reserves at a level equivalent to twelve months of operating expenditure. The application recognises that this would be an unusually high level of cover for a larger organisation, but cites its small size as justification for this, on the basis that a large outflow of funds would disproportionately affect its ability to operate.
23. By the end of 2019, reserves stood at around 60% of target, so the plan is to add a further £70k to accumulated reserves to bring them within policy, The target will be met within 7 years based upon an annual contribution to reserves of £10k per year. However, CLSB also intends to transfer any underspend to its reserves which may reduce the time taken to meet the target.

Consultation on PCF

Summary

24. On 22 July 2020, the CLSB issued a consultation on the proposed PCF increase. The consultation was published on the CLSB website and was promoted to the regulated community by email. Reminders were also sent to the regulated community through web news items and newsletter articles. The LSB acknowledges the CLSB's attempts to raise awareness of the consultation.
25. The consultation closed on 6 September 2020 (open for over 6 weeks), and received 17 responses, a response rate that fell compared to the previous year's 30 responses. The CLSB considered this to be an outcome of the PCF remaining at the same level, which may have attracted less participation.
26. The consultation mainly asks whether respondents agree with the proposed 2021 PCF of £275. We set an expectation last year that the CLSB should consult more widely on its propositions. We explained that this should be considered in the interests of receiving more feedback on the fee proposals and an enhanced engagement from the profession. While the main question of the consultation was still on the proposed level of the PCF, the CLSB included additional follow-up questions in line with our expectations.

Consultation responses and consideration of responses

27. The application states that the respondents to the consultation were in general, in support of the fee increase, as 15 out of the 17 respondents agreed with the proposed fee. The remaining two respondents were of the view that the fee should be reduced in the light of the pandemic.
28. The CLSB considered the consultation responses and is of the view that the proposed level of PCF at £275 is appropriate. As regards the respondents who raised that the

PCF could have been decreased due to Covid-19, the CLSB confirmed it took this into account when considering the impact to the profession more generally. It further considered the limited responses to questions 2 to 5.

Permitted purposes

Allocation to permitted purposes

29. All PCF income received by the CLSB 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 the CLSB covers:

- regulatory policy (e.g. developing standards, guidance, evidence gathering and risk analysis)
- sector engagement (e.g. ACL, enquiries, communications, and press)
- supervision
- disciplinary activities
- education and training
- governance

30. The CLSB provide broad breakdowns of the proportion of PCF income spent on each of the above activities. It is noted that the figures provided are estimates and will vary from year to year depending on demands on its resources. The CLSB further outlined that the differences in these estimations from last year are an outcome of:

- Specific development of projects in accordance with its business plan;
- Resources used to work with ACLT in order to reopen and audit the Costs Lawyer Qualification in 2020;
- Reviewing regulatory arrangements;
- Efficiencies deriving from process amendments;
- Needs to reach out to the profession due to the outbreak of Covid-19.

LSB targeted review

31. In our 2019/20 Business Plan⁵ 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 CLSB, the LSB published a consultation on the new draft practising rules and guidance on 30 July 2020. We look forward to receiving the CLSB's response to the consultation.

Transparency of PCF information to fee paying members

Clarity of information provided

33. The CLSB sets out how it intends to communicate the proposed level of the 2021 PCF. A fee note will be provided to practitioners and will include the level of the PCF as well as will explain when and how payment may be made. The level of PCF is also

communicated as a news item, newsletter post and by email when this is approved by the LSB.

34. Concerning the provision of information as regards how the PCF is set and on the proposition that goes to the LSB and Office for Legal Complaints (OLC) levies, the CLSB explains that this becomes available as part of the online application process and all the relevant information can be accessible through the FAQs on the Practising Certificates section of CLSB's website.

Regulatory and Equality Impact assessment

35. The application sets out a description of the applicability of the regulatory objectives and the ways in which the CLSB has taken into account the better regulation principles.
36. A formal regulatory and equality impact assessment has not been carried out as part of the CLSB application. We set out an expectation in last year's decision for CLSB to either carry out full impact assessments this year or to provide an explanation of why they were not considered appropriate. The CLSB application explains that it does not consider it necessary or proportionate this year, and sets out that this decision was made due to the following reasons:
- As part of the consultation responses review, no evidence was provided to suggest that an adverse differential impact was likely at the proposed level of the PCF.
 - The review on the impact of last year's fee increase suggested that the current fee, which is to remain static for 2021, is not causing a differential impact.
 - Taking the above into account, considering the better regulation principles and the fact that the fee level is the same as last year and, it does not believe that it would be proportionate to undertake a full impact assessment this year.
37. The CLSB considered the impact associated with Covid-19 and the emerging evidence that a differential impact could take place on the profession. The CLSB's view is that a collective method for estimating the impact of the pandemic on individual Cost Lawyers is unrealistic. In addition, the CLSB notes that an effort to address any perceived impact for a number of Costs Lawyers, by reducing the level of PCF, may inherently lead to an adverse impact for other groups of the profession. That said, it is of the view that lessening the fee is not justifiable at this stage.
38. 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

2 October 2020

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

Summary of expectations for next application

- We expect the CLSB to keep the LSB informed of significant developments in relation to its resourcing. The CLSB is to submit an update on progress by March 2021 which will include details on progress made as regards its 2021 Business plan priority for modernising the CLSB (Paragraph 20)
- 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 38)

Matthew Hill, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
2 October 2020**