



Approval of 2021 Practising Certificate Fee (PCF) application made by the Chartered Institute of Legal Executives (CILEx) and CILEx Regulation 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 CILEx and CILEx Regulation 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. CILEx is an approved regulator and CILEx Regulation is the regulatory arm to which CILEx has delegated its regulatory functions. The CILEx Group is formed of: CILEx; CILEx Regulation Limited; CILEx Law School Limited.
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

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

6. The CILEx Regulation PCF application submitted to the LSB provides that practising certificate fees are unchanged for 2021. Entity fees payable by each firm continue to be variable, based upon turnover and how client money is held⁴ and there is no change to the fees in each band. The proposed 2021 fee rates are as follows:

Fee type	Paid by	2020	Proposed 2021
PCF	CILEx Fellow	£364	£364
PCF	Associate Prosecutor	£271	£271
Practice Rights top up	CILEx Fellow with additional practice rights (per right)	£60	£60
Practice Rights top up	Other CILEx members with additional practice rights (per right)	£60	£60
Advocacy rights	CILEx Fellows with additional rights of audience	£150 (at first renewal and then once every 3 years)	£150 (every 3 years)
PCF	Non-member with practice rights	£450	£450
Entity application/renewal	Entity	Variable as fee scale	Variable as fee scale – Appendix 1

7. The CILEx Group's total income for 2021 is expected to increase by £95,602 in 2021 due to an expected 4% increase in the Fellow membership⁵. The Group's projected total PCF income for 2021 is £2,505,367. Of the total projected PCF income, it is expected that £2,469,883 will be collected from PCF charged to Fellows (the most significant segment of its regulated community) and £35,484 will be collected from PCF charged to Associate Prosecutors⁶.
8. The LSB's decision is to approve in full the levels of the PCF for 2021 set out in CILEx Regulation's application.

LSB assessment

Development of the overall budget and application

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

9. The application has been submitted jointly by CILEx and CILEx Regulation. CILEx Regulation sets its budget independently and its resource requirements are

⁴ Client money can be held in a client account or approved escrow.

⁵ CILEx Regulation expect this additional income through increased practice rights applications, subject to LSB's approval of this alternative route to authorisation in 2021.

⁶ The PCF for Associated Prosecutors is paid by the Crown Prosecution Service.

determined by the CILEx Regulation Board. The CILEx Regulation budget was considered at the November 2020 Board meeting, it was then incorporated into the CILEx Group’s draft 2021 budget.

Clarity and transparency of overall budget setting

10. CILEx Group’s draft budget 2021 provides a breakdown of income and expenditure of regulatory and non-regulatory permitted purposes activity.
11. Total permitted purposes expenditure is expected to increase in 2021, by £187,596. This is an increase of £81,915 in CILEx’s Permitted Purposes expenditure (including an increase in LSB levies of £29,935) and an increase of £105,681 in CILEx Regulation’s permitted purposes expenditure including the compensation fund.⁷ CILEx Regulation also explained to us that as part of a reclassification of costs for the 2021 budget, this had the effect of reducing direct costs but increasing shared services costs across the CILEx Group, reflecting the move to activity-based costing.⁸
12. To meet this additional expenditure, CILEx Regulation is expecting an increase in income through increased practice rights applications, subject to LSB’s approval of this alternative route to authorisation, by 2021.
13. The effect of the change is that the CILEx Regulation permitted purposes proportion of an individual PCF for a Fellow, will decrease from £219 to £213 and the CILEx permitted purposes proportion will increase from £123 to £125. This is reflected in the table below.

CILEx Fellow PCF breakdown	2020	2021
CILEx Regulation	£219	£213
CILEx	£123	£125
Levies	£22	£26
Total CILEx Fellow PCF	£364	£364

14. The LSB considers that the application provides a reasonable level of information on the development and setting of the overall budget.

Evidence that immediate and medium-term needs have been considered

15. The application notes that CILEx Group had a surplus before tax of £628,603 in 2019, which is lower than the surplus of £842,955 in 2018. The application notes that this has replenished the CILEx Group’s financial position and has thus enabled it to make strategic investments. For instance, CILEx Group implemented a CRM system in August 2019 and the CPQ (CILEx Professional Qualification) is projected to go live in

⁷ The proposal for the 2021 compensation arrangements contributions was to hold the contributions at 2020 rates, which was supported by the authorised entities.

⁸ One example of how this happened is that costs for issuing the practising certificate have been moved from CILEx permitted purposes to shared services as a cost incurred by CILEx Regulation but purchased from CILEx. And the cost of customer services undertaken by CILEx on behalf of CILEx Regulation has been similarly rescheduled in the budget for 2021. Together these costs have increased shared services by approximately £55,000.

2021.⁹ In light of COVID-19, the CILEx Group is expecting to make small net surpluses in 2020 and, to return to 2019 levels of surplus before tax in 2021.

16. We note that the application explains that the CILEx Regulation Board considered the resource requirements for 2021, according to its strategic aims.

Reserves

17. CILEx Group has a clear reserves policy (which was updated in 2020) which provides that a minimum of six months' operating costs will be held for both CILEx and CILEx Regulation. The application demonstrates that its current reserves are in line with this. The application states that CILEx Regulation has access to a small independent reserve of £167,464, which is administered independently of CILEx. This amount of reserves derives from year-over-year surpluses. The application notes that additional revisions will be considered, if necessary, to ensure compliance with the LSB's revised PCF rules.

18. CILEx Regulation explained it is able to draw on the wider CILEx Group reserves under protocols agreed between CILEx Regulation and the CILEx Group. These provide that CILEx Group will meet reasonable funding requirements of CILEx Regulation, including exceptional costs – e.g. in relation to any new regulatory developments.

19. In addition to this *Contingency Reserve*, CILEx Group holds two other types of reserves:

- A central *Strategic Reserve* equal to the amount of cash and investments held that are in excess of the Contingency Reserve¹⁰, held to fund business development activities and investment opportunities
- *Local Working Capital Reserves* which are required to enable each operating company to maintain sufficient cash to meet its working capital requirements, equal to 2 months of operating costs.

20. We sought more clarity about how the medium-term ability to withstand risk factors has been assessed by CILEx and CILEx Regulation. The following was provided to us as further clarification:

- CILEx Regulation explained that both CILEx and CILEx Regulation have some resilience in relation to income sources, beyond the collection of the PCF. CILEx has a multimillion-pound investment portfolio which has been accumulated through its diverse activities and has performed well, even given the challenges presented in 2020.

⁹ The CILEx Professional Qualification is the new CILEx qualification framework currently being designed by CILEx to meet CILEx Regulation's new Education Standards, which are themselves being presented to LSB for approval in early 2021.

¹⁰ As at the end of 2019, CILEx Group held £8.9 million in cash and investment reserves (more than 3 times the level of PCF income in the 2021 budget)

- Also, CILEx Regulation expects its non-PCF income streams to increase, as in accordance with CILEx's strategy to increase the number of CILEx members applying for practice rights. This is subject to the expected approval of the CILEx Regulation education standards in early 2021.

21. In future applications, it would be helpful for the application to provide the necessary information and analysis concerning how CILEx Group has assessed its medium-term ability to withstand risk factors.

Consultation on PCF

Summary

22. CILEx Regulation consulted on the proposed PCF between 7 September and 19 October 2020. The proposal was put to, and was supported by, the CILEx Finance Committee at their meeting on 6 November 2020 and was agreed by the CILEx Regulation Board at its meeting on 10 November 2020, subject to approval by the LSB.
23. CILEx Regulation explains that the consultation was sent to all those required to pay the annual practising fees and can also be found on CILEx's website.
24. There were separate consultations for the different types of regulated members, Fellows, Practitioners and Entities. It has confirmed that the relevant consultations were emailed directly to all Fellows, Practitioners, Advocates and entities. CILEx Regulation provided the LSB with a summary of the responses as part of its application

Consultation responses

25. The application sets out a summary of the main themes and points made in response to the consultations.
26. The consultation received 899 responses from Fellows (an increase to the 648 responses received last year) which equates to a response rate of 13% of the paying Fellows in 2020. The respondents whose numbers account for the most significant segment of CILEx Regulation's regulated community, were largely supportive (90.6%) of holding the fee at its 2020 rate. CILEx Regulation is to be commended for achieving such a high level of response to its consultation process.
27. The application states that CILEx Regulation recognises the significant impact of COVID-19. As a result it will be notifying all Chartered Legal Executives, CILEx Practitioners and Advocates of the availability of financial assistance for annual subscriptions, including PCF, to those experiencing hardship caused by Covid-19. This will be available through the CILEx Foundation.
28. In the course of assessing the application, we asked CILEx Regulation to provide further details on the operation of this Foundation. CILEx Regulation explained that it

is a charitable foundation, consolidated from previous charitable funds within CILEx, that has available funds of approximately £200,000 to support members experiencing hardship.

Permitted purposes

Allocation to permitted purposes

29. CILEx Regulation has stated in its application that all PCF income is used to undertake permitted purposes within the scope of section 51(4)(a) of the Act, which relates to the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons.
30. The application further provides an overview of the permitted purpose activities undertaken by CILEx which includes an analysis of the permitted purposes work, as a percentage of its work overall. These are recorded in the following table:

CILEx department	All permitted purposes activities
Operations (including Membership, Sales and development, Awards and Education)	23.8%
Communications (including business development, marketing, direct mailings to Authorised Persons, CILEx Regulation publications, press releases and the Journal)	1.2%
Policy and Governance (including providing representation, liaison and support in the areas of law reform, managing the relationship with the LSB, other Approved Regulators and government)	36.0%
Central Resources and Administration (including HR, IT, Finance, Procurement and Facilities)	20.7%

31. The percentages are based on an assessment by the CILEx Executive team of the amount of departmental time spent on all permitted purposes activities or in providing services to CILEx Regulation under a service level agreement.
32. The draft 2021 budget sets out that the CILEx Group will spend £2,505,367 on permitted purposes in 2021. Of this, CILEx Regulation will spend £1,647,362 and CILEx will spend £853,787.

LSB targeted review

33. In our 2019/20 Business Plan¹¹ we set out our 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.

¹¹ https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf

34. Having engaged closely with approved regulators and their regulatory bodies, including CILEx Regulation, the LSB published a consultation on the new draft practising rules and guidance on 30 July 2020. The consultation closed on 8 October 2020. We received a response from CILEx Regulation which we will assess along with the other responses we received.

Transparency of PCF information to fee paying members

Clarity of information provided

35. The proposed PCF for 2020 was shared as part of the consultation. Following LSB approval, CILEx Regulation confirmed that a letter will be provided to all fee-paying members which sets out the proportion of the PCF.

Regulatory and Equality Impact assessment

36. CILEx Regulation's application provides comments on how it has had due regard to equalities issues and has taken into account the better regulation principles. While it holds some diversity data through its 2019 diversity survey, it explains that because the annual consultation process on the CILEx Regulation practising fee is anonymous, there is no direct data correlation between the protected characteristics and the responses to the consultation.
37. CILEx Regulation explains that in future it plans to add a dedicated question to ensure that any potential adverse impact on those with protected characteristics is identified. This is welcomed and in future, we would expect CILEx Regulation to be able to demonstrate how it has used the responses to this question to ensure a more meaningful assessment of the equality impact of the level of PCF.
38. We note that CILEx Regulation has provided us with assurance, through recent engagement including this year's regulatory performance assessment, that it will soon be able to gather better data on the diversity of its regulated community. We understand that CILEx Regulation will collect data as part of the annual membership renewal process, thereby maximising return rates and ensuring data is up to date. In future years, we will expect CILEx to be able to demonstrate how this improved data is informing its assessment of the impact of its fees.
39. We also note that CILEx Regulation has not completed a regulatory impact assessment. However, in light of the pandemic, CILEx Regulation has explained that the availability of the CILEx Foundation¹² to assist individuals in financial hardship should help to mitigate the risk of the PCF having an adverse impact on those with protected characteristics and the regulated community generally.

¹² The Foundation, an independent charitable body, will be funded from 2021 through discretionary contributions from surplus arising from non-permitted purposes membership representation and other activities of CILEx.

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40. CILEx and CILEx Regulation believe that their approach to maintain the PCF level this year, while providing access to funds from the CILEx Foundation for those experiencing financial hardship strikes the right balance to ensure sufficient funds for it to regulate effectively, while mitigating the impact of the PCF on those individuals who are adversely affected by the current and likely future conditions.

Decision

41. The LSB has approved the PCF application submitted by CILEx Regulation for 2020/21 under section 51 of the Act.

Summary of expectations for next application

- CILEx Regulation to provide a clearer articulation of the purpose of reserves held. We expect that it provides the necessary information and analysis concerning how they assess against their medium-term ability to withstand risk factors (paragraph 21)
- CILEx Regulation to provide a more meaningful assessment of the equality impact in its next PCF application (paragraph 37)

Matthew Hill, Chief Executive

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

14 December 2020