LEGAL SERVICES BOARD

Approval of 2022 Practising Certificate Fee (PCF) application made by 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 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 and the Practising Fee Rules 2021 (Rules)[1].

3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee under section 51 of the Act. ICAEW is an approved regulator, and has delegated its regulatory functions to the ICAEW Regulatory Board to whom executive support is provided by the Professional Standards Directorate (the regulatory body).

4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. The Rules specify the permitted purposes that the practising fee may be applied to, the criteria and material the LSB will consider before deciding to grant an approved regulator’s application in whole or part, the information approved regulators are required to submit, and the application process and procedure. An approved regulator must also have regard to the LSB’s Guidance on the Practising Fee Rules 2021 (Guidance)[2] which gives guidance on each of the Rules.

5. This notice sets out the decision taken, including an assessment of the PCF application.

Summary and overview of PCF application and decision

6. The application submitted by ICAEW provides that the practising fee will increase by 5% from the fee levied in 2021. The 5% increase will be applied across the fee scale that determines the level of PCF to be charged to firms depending on their size as

[1] https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf
[2] https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf

detailed in appendix 5 of the application. The proposed fees for 2022 are set out below.

2022 practising fees

AUTHORISED FIRM			
	Offices		
Principals	1	2 - 10	11+
Sole	375	653	1,147
2 - 5	653	1,147	2,014
6 - 9	1,147	2,014	3,534
10 - 50	2,014	3,534	6,201
51+	4,028	7,070	12,404

LICENSED FIRM			
	Offices		
Principals	1	2 - 10	11+
Sole	375	653	1,147
2 - 5	1,306	3,438	8,055
6 - 9	2,292	6,041	14,138
10 - 50	4,028	10,604	24,807
51+	8,055	21,208	49,614

7. ICAEW's projected total PCF income for 2022 is £565,227 (an increase from £529,835 in 2021), based on the assumption of 346 firms paying a PCF[3].

8. We are satisfied that ICAEW's programme of regulatory activities for 2022 which will be funded by the PCF fall within the permitted purposes, in compliance with section 51(2) of the Act.

9. Further, the application enables the LSB to be confident that ICAEW has carefully and properly planned its financial position for the forthcoming year. We note that ICAEW has adequate reserves in place to meet 6 months of its regulatory functions for legal services operating costs.

10. ICAEW has notably increased the transparency and accountability for their activities and the allocation of their resources by adopting an engagement strategy that has allowed them to meaningfully consult with their regulated community and members, respectively.

11. The application also considers the estimated impact of the proposed practising fee on persons with protected characteristics under the Equality Act, and the impact of Covid-19 on authorised and licensed firms' income for 2022. We note that ICAEW included diversity questions in the consultation on the PCF.

12. The LSB's decision is to approve in full the PCF for 2022 payable by firms as set out in the application by ICAEW.

LSB assessment

<u>Allocation of practising fee to permitted purposes</u>

13. We are satisfied that the regulatory body of ICAEW set its budget, to be funded by the PCF, independently as set out on pages 18 to 20 of the application. This explains the budgetary process, and that the draft budget for regulatory activities was approved

[3]Not all fee payers will pay the full fee as some will be subject to discounts and others will pay a partial fee as they join the profession during the practising year.

solely by the ICAEW Regulatory Board. The representative side of ICAEW is only involved in setting the budget for shared services costs which amount to 9.5% of total expenditure for the regulatory body.

14. ICAEW proposes to collect a total PCF amount of £565,227 which is a 5% increase on 2021. All this PCF income will be allocated to the regulatory body.

15. ICAEW's programme of regulatory activity to be funded by the PCF for 2022 is set out in its Reserved Legal Services Business Plan 2021-2022[4]. ICAEW has also set out the level of funding required to deliver its programme of activity. The majority (68.7%[5]) of its PCF income will fund the cost of staff delivering regulatory activities. Page 16 of the application breaks down cost by activity and shows that most of the PCF will be used to fund policy and engagement (31%), registration and supervision (25%), and governance and insurance (22%).

16. Page 17 of the application sets out that the most significant increase in expenses requiring the 5% increase in the PCF is staff costs, which will increase by £22,111. This is a 6% increase compared to 2021, which ICAEW say will allow it to deliver the activities described in the Reserved Legal Services Business Plan 2021-2022. These activities include increased work related to the internal governance rules, tracking, analysis, and reporting, consultations and applications for change, and project and research work.

17. Although ICAEW has set out how it will allocate the PCF income, next year's application would benefit from additional transparency over the allocation of time to each regulatory activity. This will improve the overall transparency of the allocation of resources.

18. We note that the LSB's report 'Regulatory performance: Performance assessment November 2020'[6] of ICAEW showed 3 unmet regulatory outcomes. We understand the increase in PCF in 2022 is to fund activities set out in the Reserved Legal Services Business Plan 2021-2022 aimed at meeting these unmet outcomes.

19. We asked ICAEW a follow-up question about how ICAEW intends to distribute the cost of funding its regulatory activities, through the practising fee, amongst its regulated community. ICAEW provided further information which shows that of practising fee total, 11% will be collected from authorised firms and 89% collected from licenced firms. The ICAEW practising fee structure is based on the size of the firm and therefore ability to pay consistent with the approach taken in previous years. As set out in appendix 5 of the application, the 5% increase in fees is applied uniformly across the fees scale.

20. We asked the ICAEW a follow up question about how it has measured the potential benefits of these regulatory activities at the point at which the activities were determined. ICAEW explained that it has carried out a range of activities to this end, including:
    - Consultation on the ICAEW Reserved legal services business plan
    - Regular quality assurance surveys on satisfaction with visits/reviews
    - Joint activities assessments with other regulators such as for Legal Choices

[4] Reserved legal services business plan | ICAEW
[5] Staff costs are 68,7% of budget when compensation scheme levy is excluded
[6] Regulatory Performance: Performance assessment November 2020

- Ongoing returns and reviews for LSB feedback
- ICAEW internal project reviews.

21. We asked ICAEW for further information about how the benefits of those regulatory activities funded by the PCF will be assessed. ICAEW responded that the potential benefits to the firms will be assessed through a range of activities including:
    - Project management identifying positive outcomes, and the team and project board managing and confirming delivery,
    - Post project review, outcomes delivered and lessons learned
    - Senior management review and oversight from the ICAEW Regulatory Board.

22. We are satisfied that ICAEW has complied with the two guiding principles in setting the PCF to fund permitted purposes set out in section 51 of the Act and the Rules, and that in relation to its regulatory functions, it has a plan that should allow it to discharge these in a way that is compatible with the regulatory objectives set out in section 28 of the Act.

23. We are satisfied with the additional information that ICAEW has provided on how it has determined the benefits of these regulatory activities and how it will assess the benefits of these regulatory activities after the activities have been completed. We would expect information about the plan for evaluation of the benefits of PCF funded regulatory activities to be included in future applications, as required under rule 14 of the Rules. We expect the ICAEW to report to its regulated community on the application of the 2022 PCF, and actual benefits before the next PCF cycle in 2022/23

Budget for 2021/22 and financial information

24. ICAEW has provided its 2022 draft budget and the income and expenditure for 2021. The application notes that the draft budget takes the following into consideration

    - activities listed in the legal services regulatory business plan
    - 2021 Forecast analysis versus 2021 budget
    - 2022 Budget analysis: Income and expenditure forecasts, including practising fee income, for the year in which the practising fee will be levied.
    - 2022 Budget to 2021 Forecast: A comparison of actual and budgeted income and expenditure.
    - 2022-2024 Budget and results estimation: Income and expenditure forecasts, including practising fee income for the next three years.

25. The draft budget includes the expected outturn for 2021 on page 13 of the application as the actual position for the year will not be known until after the end of the financial year, although it is expected that there will be a net surplus of £13,969. Page 17 of the application sets out that ICAEW's PCF income is expected to increase from £529,835 in 2021 to £565,227 in 2022 and that the budget will lead to an excess of budgetary requirements by £14,019 which ICAEW intends to use as a return of start-up costs to the ICAEW representative side. Page 14 of the application shows that ICAEW's largest proportion of income is derived from the PCF (85.8%), with 13.5% from the Compensation Fund and 0.8 % from regulatory penalties.

26. ICAEW has clarified that in Appendix 5, a formatting error has caused the totals in the table for the volume of licensed firms to be a copy of the totals for the neighbouring table for authorised firms. ICAEW has confirmed that the content of the rest of the

table for licensed firms is correct and that this formatting error does not impact on ICAEW's income assumptions.

27. We are satisfied that the application provides transparency to the regulated community about the allocation of ICAEW's resources (including PCF income) and enables the LSB to be confident that ICAEW has carefully and properly planned its financial position for the forthcoming year.

Reserves and financial resilience

28. The application notes on page 20 and appendix 7 that ICAEW has adequate legal services regulatory reserves in place to meet 6 months of operating costs. This reserve was created at the inception of ICAEW being approved as a probate regulator and therefore there have been no surpluses generated by PCF income for the purpose of additional reserves. The forecast for 2021 does not estimate a higher than anticipated surplus.

29. Page 25 of the application sets out that the ICAEW policy on reserves is reviewed and approved annually in terms of both target and progress to the policy as part of the annual ICAEW financial statements sign off by ICAEW audit committee and board.

Consultation and engagement

30. Pages 26-30 set out ICAEW's engagement with its regulated community on its budget, proposed programme of activity, and level of PCF before submitting its application to the LSB. ICAEW took a multi-channel approach to engagement using direct emails, social media, and e-newsletters. The application sets out that this approach gathered 59 responses compared to only two responses to last years' PCF consultation. ICAEW notes that this response rate means that 83% of the population contacted has not expressed a view.

31. ICAEW has noted that responses to the consultation were generally supportive of the proposed budget but not of the proposed fee increase. ICAEW has noted concerns raised in the application and reflected on the possible impact on smaller firms of a fee increase. ICAEW notes that no change is planned to the proposed fee proposal for 2022 which was consulted upon because of these comments. Further ICAEW sets out that the fee scale is designed to ensure smaller firms face less of a financial burden.

32. The LSB welcomes that ICAEW has increased transparency and accountability for its activities by the steps it has taken to engage its regulated community and promote a meaningful discussion regarding the proposed practising fee. Further, we note that the application also provides transparency on the consultation responses received and how these have been considered.

Impact assessments

Equality Impact assessment

33. A summary of an initial Equality Impact Assessment (EIA) which considers the likely impact of the level of the PCF on the regulated community with protected characteristics has been provided by ICAEW in the application.

34. We sought additional information from ICAEW to understand whether the EIA had been informed by the diversity data and awareness that ICAEW holds more generally.

ICAEW noted that the PCF consultation included specific questions about whether the PCF would adversely affect persons with protected characteristics. However, the consultation did not seek to obtain diversity information about the consultees. ICAEW has clarified that its biennial probate diversity report will be published in October 2021 will help inform considerations for the 2023 PCF. ICAEW does not believe that early findings from this report indicate any potential adverse equality impacts on the regulated community.

35. We consider that the application provides sufficient consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse, and effective profession. The LSB would be interested to see in the next PCF application how any diversity information gathered during that PCF consultation relates to any findings from the biennial probate diversity report.

Regulatory impact assessment

36. The application included an impact assessment on page 31 which concluded that there will be no harm or potential harm from the proposed PCF increase.

37. We consider that ICAEW has proportionately considered the impact of the level of the PCF on the conduct of legal services by their regulated community in setting the PCF for 2022.

Decision

38. The LSB has approved the PCF application submitted by ICAEW for 2022 under section 51 of the Act.

Summary of expectations for next application

- ICAEW to include approximate allocation of time to each regulatory activity, to further improve transparency.
- ICAEW to provide information about how it will assess the benefits of regulatory activities funded by the PCF after the activities have been completed.
- ICAEW to report to its regulated community on the application of the 2022 PCF, and actual benefits before the next PCF cycle in 2022/23
- ICAEW to provide reflections about how diversity information gathered during the PCF consultation relates to any findings from the biennial probate diversity report.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
11 October 2021