26 November 2021

Approval of 2021/22 Practising Certificate Fee (PCF) application made by CILEx Regulation (CRL) and CILEX 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 CRL and CILEX 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 required by section 51 of the Act. CILEX is an approved regulator, and CRL is the regulatory body to which CILEX has delegated its regulatory functions.

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 CRL and CILEX proposes that the PCF for 2022 is increased. The overall proposal is for a 0.8% increase. Entity fees payable by each firm continue to be variable, based upon turnover and how client money is held. The proposed 2022 fee rates are as follows:

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[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

Fee type	Paid by	2020	Proposed 2021
PCF	CILEX Fellow	£364	**£367**
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)	**£151 (every 3 years**
PCF	Non-member with practice rights	£450	**£453**
Entity application/renewal	Entity	Variable as fee scale	**See Appendix 1**

7. CRL and CILEX projects total PCF income for 2022 of £2,403,056 (an increase from the actual PCF collection of £2,380,681 in 2021). It is projected that £1,402,533 of the PCF will be collected from the PCF charged to CILEX Fellows and Associate Prosecutors, and £56,006 collected from firms, with the remainder from Practice Rights Top Up.

8. The table at paragraph 8 of the application shows the distribution of PCF income across CRL's regulated community for 2021 and 2022. In 2021 PCF income from firms was £27,853 (2% of PCF income), CRL projects that for 2022 this will increase to £56,006 (4% of PCF income), we asked CRL the reason behind the projected increase in PCF income collected from firms. CRL responded by saying that it regulates around 6,700 individuals, 12,000 CILEX members and 25 firms, therefore the majority of PCF income comes from individuals rather than firms. The income from firms between 2021 and 2022 has changed owing to the number of firms from 23 to 25 during the year, this accounts for the increase in PCF contributions from firms, and the approval of the ACCA application by the LSB in October 2021, which approved changes to its regulatory arrangements to provide a route for CRL to authorise and regulate persons previously authorised by ACCA.

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

10. Further, the application enables the LSB to be confident that CRL and CILEX have carefully and properly planned their financial position for the forthcoming year. CRL has addressed previous LSB recommendations regarding its reserves and acted to provide greater transparency and create a distinct reserves policy for CRL. CRL and CILEX have other income streams[3] in addition to the PCF which makes their financial position more resilient.

[3] CILEX's other income streams come from: professional membership association of other grades, not just authorised persons; through CILEX awarding body and CILEX Law School.

11. The application has provided us with a level of detail that demonstrates transparency and accountability for both CRL and CILEX's regulatory activities and the allocation of their respective resources. We note that CRL's consultation on the proposed PCF included detailed information on its planned regulatory activities. CRL also set out the benefits to its regulated community from activity associated with the PCF paid in 2021. The consultation attracted 465 responses from Legal Executives, CILEX Practitioners and Advocates and CILEX firms with an increase in respondents from protected characteristics, although this was significantly less than the responses received last year.[4]

12. In their consultation, CRL and CILEX proposed a 2% increase in the PCF. However, the responses from their regulated community highlight that individuals and firms are still recovering from the impact of the pandemic. CRL and CILEX recognised that these responses demonstrated that there could be a negative impact of raising the PCF by 2%, CRL and CILEX explained how they can achieve this reduction without affecting the delivery of services and regulatory performance.

13. The proposal also considers the estimated impact on those with protected characteristics under the Equality Act, and the impact of Covid-19 on authorised persons and firms' income for 2022. Following responses to the consultation, CRL and CILEX's impact assessment found that the proposed 2% increase could adversely impact on those with protected characteristics and potentially have a disproportionate relating to ethnicity and disability. CRL and CILEX reconsidered their budgets and opted to reduce the PCF increase from 2% to 0.8%.

14. The LSB's decision is to approve in full the increase of 0.8% of the PCF for 2022 to be charged to individuals and firms as set out in the application.

LSB assessment

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

15. We are satisfied that CRL set its budget independently, as confirmed in paragraph 44 of the application. Paragraph 46 of the application explains CRL's budget process; the draft budget was approved by CRL's board in May 2021. CRL and CILEX worked to create an overall PCF budget ready for consultation. This was signed off by the CRL Board in July 2021 and the consultation was published between 5 August and 10 September 2021. CRL and CILEX reviewed the consultation responses and agreed to reconsider the budget to ensure the views of their regulated community were taken into account. The revised budget for 2022 was signed off by CRL and CILEX.

16. The total amount of PCF to be collected in 2022 is £2,403,056. Section 2 of the application sets out the allocation of the PCF between CRL, CILEX and the levies[5]. £1,458,539 (60%) will be allocated to the regulatory body (CRL) and £783,420 (33%) will be retained by the approved regulator (CILEX). CILEX's share of the PCF has reduced from 2021, showing a greater amount of the PCF being used for regulatory functions. The remaining £161,097 (7%) will be used to fund the work of the Legal

[4] Last year CRL received 899 responses.

[5] Levies include the Legal Services Board, the Legal Ombudsman and the Office for Professional Body Anti-Money Laundering Supervision.

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17. Paragraphs 11 to 13 of the application set out CRL's programme of activity, which is linked to its Corporate Strategy Objectives and Business Plan for 2022. The majority (56%) of its PCF income will fund its core regulatory objectives. CRL has set out that 24% of its PCF income will be used to fund its strategic objectives, enhancing consumer information, championing diversity and upholding standards. The remainder of CRL's PCF income is spent on services shared with CILEX, as detailed at paragraph 13 of the application.

18. The table at paragraph 22 of the application sets out CILEX's programme of activity and how each activity is linked to the permitted purposes and regulatory objectives. The table sets out the percentage of CILEX's share of the PCF allocated to each area of work. The majority (58%) of its PCF income will fund Membership, Sales and Development, and Awards and Education. 33% of its share of the PCF will fund central resources and administration, and the remainder will fund policy and governance (8%), and communications (1%).

19. Paragraph 8 of the application explains that CRL and CILEX intend to distribute the cost of the level of funding required using a proposed fee structure that is similar to that applied in previous years, with 96% of the overall requirement to be collected from individuals, and 4% collected from firms based on their turnover.

20. We asked CRL and CILEX how they will assess the benefits of the regulatory activity set out in the application. CRL responded by saying that progress of these activities will be measured, reported and evaluated against KPIs, and the output of this work will be monitored by CRL's Board. The outcomes of the activities will be measured against the regulatory objectives and CRL will also assess these activities against stakeholder feedback. CRL said that both collaborative and CRL led research is planned as a part of its 3-year strategy to ensure that it is able to benchmark and track progress against the strategic objectives and the activities undertaken to meet them.

21. CILEX said that it will also assess the benefits and impact of its activities related to the permitted purposes through KPIs linked to its strategic and business plan. This includes progress against the strategic aims and the external impact of its activities as an Approved Regulator, such as whether its responses to consultations or interactions lead to changes in policy or reform, and whether it is successful in influencing stakeholders. CILEX also utilises member and sector surveys, as well as external audit processes, such as the LSB and OPBAS Performance Reviews, to measure its effectiveness and therefore the benefit of the permitted purposes activity.

22. We are satisfied that CRL and CILEX have complied with the two guiding principles in setting the PCF for its regulatory functions, that is, that the PCF must be allocated solely for permitted purposes set out in section 51 of the Act and the Rules, and that it will discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act. We are also satisfied that CRL and CILEX have set out how they have measured the benefits of these activities at the point at which the activities were determined and how they will assess the actual benefits after the activities have been completed.

Budget for 2022 and financial information

23. CRL notes, in paragraph 10 of the application, that as a smaller regulator, the majority of its PCF income (73%) is spent on day-to-day regulatory activity.

24. CRL has provided its draft budget and the income and expenditure for the previous year (inclusive of VAT). Paragraph 44 of the application notes that 2021 was the final year of CRL's 3-year strategy. It goes on to highlight that the 2022 draft budget has been developed using the 2022 Business Plan and the new strategy. CRL says it determined resource requirements for 2022 by considering its strategic aims and taking into account the consultation feedback it received from its regulated community.

25. To enable the 0.8% increase in PCF, as opposed to the initially planned 2% increase, CRL and CILEX revised their budgets. This included utilising £25,000 of reserves from CILEX. We asked CRL to explain what analysis was undertaken to determine that £25,000 of the reserves would be sufficient to meet its programme of activities. CRL responded by saying that savings were identified through a decision to continue to work from home, reducing some budget lines relating to staff training, and to make use of some of CRL's uncommitted reserves, whilst keeping the CRL reserves within the target range set out in the CRL Reserves Policy and in compliance with the LSB's PCF Rules and Guidance.

26. CILEX explained that in response to a request from CRL for assistance to bridge the gap in their budget to keep a rise in the PCF to a minimum, CILEX agreed to contribute a sum of £25,000 of uncommitted reserves by way of subsidy[6]. The sum of £25,000 had previously been held in a committed reserve for the purpose of supporting the Compensation Fund insurance. However, because of the changes approved by the LSB earlier this year to a revised model of the Compensation Fund[7], this sum is no longer required and was released back into the CILEX non-committed reserve.

27. Paragraph 32 of the application sets out the income and expenditure forecasts in 2022, and paragraph 49 of the application sets out financial information for 2021 which includes the budgeted income compared to the actual income and the percentage variance. A more detailed breakdown for both 2021 and 2022's income and expenditure are set out in Appendix 2.

28. Paragraph 50 of the application explains the 2% variance between the PCF income budgeted, and the actual income received in 2021. CRL and CILEX explain that there were a number of reasons for this; PCF income budgeted was based on a predicted increase in Fellows, however, actual renewals were less than it had anticipated, primarily due to the pandemic; and practice rights were lower than anticipated; and the expenditure in terms of corresponding assessment fees were also lower than budgeted, which mitigated that lower-than-expected income from applications.

29. We are satisfied that the application provides transparency to the regulated community about the allocation of CRL and CILEX's resources (including PCF

[6] This money is part of the CILEX reserves built from CILEX's other non-regulatory activities and entirely separate from the ring-fenced CRL Reserves.

[7] https://legalservicesboard.org.uk/wp-content/uploads/2021/09/CRL-Comp-Fund-Decision-Notice.pdf

income) and enables the LSB to be confident that CRL and CILEX has carefully and properly planned their financial position for the forthcoming year.

Reserves and financial resilience

30. CRL has taken into account the LSB's expectations as set out in the 2020 PCF decision notice to provide a clearer articulation of the purpose of reserves held, in its application. Paragraph 72 sets out that CRL controls two types of reserves; Working Capital Reserves, which are held by CRL and Contingency Reserves which are held centrally in CILEX Group Reserves.

31. Paragraphs 73 to 78 of the application break down the type and amount of reserves held by CRL and the reserves held by CILEX Group that are ring fenced for CRL. The total uncommitted reserves in CRL's control are £542,619, which accounts for four months of operating costs of CRL, which falls within the 3-6 months of operating costs required to be held in reserves. Furter, CRL has created its own distinct reserves policy. The table at paragraph 73 of the application shows CRL's reserves increasing considerably over time. This can be seen in the increase from £158,000 in 2019 to £358,000 in 2020, with an estimate that reserves will be £383,000 by the end of 2021 with a further £700,000 contingency reserves being ring fenced for CRL within the CILEx Group.

32. The application indicates that CRL does not have enough cash or liquid assets to meet a significant call on reserves, with the latest December 2020 accounts showing that CILEX Group had £484,000 in cash and CRL had £161,000. We asked CRL about this and how they would fund a significant call on reserves.

33. CRL confirmed that free cash reserves for CILEX are held in a liquid investment portfolio. This is accessible either through a facility for short term requirements or through liquidating the free reserves portion of the investment, both of which require Board approval. CILEX already has Board approval to access a cash facility of £500,000 should it be required. A daily cashflow is maintained to ensure sufficient cash is within the operating account to cover core business expenditure.

34. Cashflow is carefully monitored to ensure there is access to cash funds to meet its obligations.

Consultation and engagement

35. Paragraph 85 of the application outlines that CRL and CILEX's PCF consultation was open for 5 weeks. In addition to being published on CRL's website, the consultation was emailed to Chartered Legal Executives, CILEX Practitioners and Advocates and CILEX Fellows. The consultation was also sent the PCF proposal to Associate Prosecutors to the Crown Prosecution Service, however, they chose not to respond given there was not a significant fee change proposed for Associate Prosecutors.

36. The tables at paragraph 86 of the application breaks down the number of responses received from their regulated community (a total of 465). The consultation covered the programme of activities including the intended benefits to the regulated community, the proposed practice fee increase of 2%, and an assessment of the previous years' activities.

37. A large proportion of the responses from Fellows (57%) stated they had been impacted by Covid, as detailed at paragraph 88 of the application.

38. Paragraph 95 of the application sets out that the proposed 2% increase in the PCF was supported by 51% of the respondents. Following the consultation responses, discussions between CRL and CILEX and a CRL Board meeting which considered the consultation responses, it was decided that the PCF increase should be reduced from the proposed 2% to 0.8%. Paragraph 115 of the application outlines that CRL and CILEX reconsidered the PCF budget, increased contributions (£25,000) from the reserves and outlined other savings that could be made in order to facilitate a 0.8% increase in the PCF.

39. The LSB welcomes CRL and CILEX's transparency and accountability for its activities by the steps it has taken to engage its regulated community, and promote a meaningful discussion regarding the costs, benefits, and value of regulation. Further, we note that the application also provides transparency on the consultation responses received and how these have been considered. CRL and CILEX's decision to reconsider the 2% increase in the PCF demonstrates that it has considered the responses from its regulated community and understands the challenges they have faced over the past year. However, we note that the consultation attracted significantly less responses than for the previous year's PCF consultation, so would expect CRL to reflect on the reasons for this and take appropriate steps to increase engagement in future.

<u>Impact assessments</u>

Equality Impact assessment

40. Paragraph 97 of the application sets out that CRL and CILEX collected a full Equality, Diversity, and Inclusion data set. When analysed, CRL and CILEX identified that there was a risk that the proposed PCF increase (2%) could have a disproportionate impact on ethnic minorities and those with disabilities. Appendix 6 of the application sets out the full Equality Impact Assessment (EIA) CRL carried out.

41. Both the initial and full EIA were informed by the responses to its PCF consultation.

42. In the full EIA (Appendix 6 of the application), CRL and CILEX note that it received a higher proportion of ethnic minority and disabled respondents than the general population at CRL and CILEX and considers that these groups were more motivated to respond as the PCF increase was most likely to disproportionately impact them. CRL and CILEX note that there are gaps in the information they received, particularly information relating to why these groups would be disproportionately impacted. There was no information on whether other factors might be impacting these groups, for example, where they worked, their remuneration and whether the employer pays for their practising certificate.

43. CRL and CILEX highlighted that it plans to undertake both a quantitative and qualitative data collection and analysis to fully understand why these groups are disproportionately impacted before the PCF is set for 2023. For the coming year, CRL and CILEX have limited the fee increase to 0.8% and continues to provide access to the CILEX Foundation to enable those suffering from hardship to make an application for support.

44. The LSB considers that the application provides meaningful consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse, and effective profession. This was a recommendation made by the LSB in the 2020 PCF decision notice. Further, we welcome CRL and CILEX's plans to fully understand the data received from this years' PCF consultation by conducting further research into the impact on different groups of the regulated community.

Regulatory impact assessment

45. CRL and CILEX state that the central issue raised through the consultation was the continuing impact of the pandemic on regulated individuals. Paragraph 111 of the application highlights the varying impact the pandemic has had, and continues to have, on individuals.

46. In order to mitigate the impact of the pandemic on its regulated community, CRL and CILEX has limited the fee increase to 0.8% and continues to provide access to the CILEX Foundation to enable those suffering from hardship to make an application for support.

47. We consider that CRL and CILEX have given due consideration to 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

48. The LSB has approved the PCF application submitted by CRL and CILEX for 2022 under section 51 of the Act.

Summary of expectations for next application

- CRL and CILEX to reflect on the reasons for the significant decrease in consultation responses this year and take steps as appropriate to increase engagement in future.
- CRL and CILEX to outline the results of the research into why certain groups are disproportionately impacted by the PCF and how that research has influenced the PCF set in 2023.

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