LSB LEGAL SERVICES BOARD

Approval of 2022 Practising Certificate Fee (PCF) addendum application made by CILEx Regulation (CRL) 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 to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators. This application is an addendum to an earlier PCF application made by CILEX and CIRL, which was approved by the LSB in November 2021.

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 addendum application.

Overview of PCF application and decision

6. This application is an addendum ("addendum application") to the PCF application submitted by CRL and CILEX in October 2021 ("full application") and approved by the LSB on 26 November 2021 ("November 2021 decision"). The November 2021 decision authorised CRL to levy a practising fee for 2022 on persons it authorises.

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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

Since then, firms and individuals previously authorised by the Association of Chartered Certified Accountants (ACCA), have transferred to CRL under regulatory arrangements approved by the LSB in October 2021 (“transfer arrangements”). This addendum application therefore sought approval to levy a PCF for 2022 on persons previously authorised by ACCA who have transferred to CRL (“CRL/ACCA authorised persons").

7. ACCA is currently an approved regulator of the reserved legal activity of probate activities but has applied to cease regulation of legal services. ACCA’s application for cancellation of its designation as an approved regulator is currently before the LSB for consideration. Cancellation is subject to approval by the Lord Chancellor on the LSB’s recommendation.

8. Our consideration of this addendum application has taken into account the full application and the transfer arrangements.

9. This addendum application proposes that the PCF for 2022 will be £100 for individuals and £200 for firms, which are CRL/ACCA authorised persons. The PCF will cover the period of 2022, owing to the transfer timeline for ACCA individuals and firms into CRL regulation. The income CILEX/CRL expects from CRL/ACCA authorised persons was included in the total PCF income for 2022 set out in the full application.

10. Based on the information provided in the full application, we are satisfied that the CRL’s activities for 2022 which will be funded by the PCF overall, including that proposed to be levied on CRL/ACCA authorised persons, fall within the permitted purposes, in compliance with section 51(2) of the Act.

11. Further, the full application enables the LSB to be confident that CRL/CILEX have carefully and properly planned their financial position for the forthcoming year.

12. The addendum application when considered alongside the full application and the application for approval of the transfer arrangements provides transparency and accountability for CRL activities and the allocation of its resources. The public nature of both the full application, the addendum application, and the consultations on each has allowed CRL to meaningfully consult with its regulated community on the proposals here.

13. The addendum application as well as the full application also considers the estimated impact on those with protected characteristics under the Equality Act.

14. The LSB’s decision is to approve in full the levels of the PCF for 2022 to be charged to CRL/ACCA authorised persons.

LSB assessment

ACCA firms and individuals

15. Paragraph 8 of the 26 November decision explains that as of October 2021, CRL regulated around 6,700 individuals, 12,000 CILEX members and 25 firms and that therefore the majority of PCF income comes from individuals rather than firms. Paragraph 10 of the addendum application shows that as of April 2022 CRL had authorised 34 firms and 44 individuals transferring from ACCA, with a further 10 firms and 27 individuals still to finalise their applications. This is an increase of firms regulated by CRL to an expected 69 firms, nearly tripling the number regulated by

CRL. The relative increase in the number of individuals regulated by CRL after ACCA individuals join is small.

16. In the application for transfer of ACCA Probate Practitioners and Firms, CRL proposed a PCF of £200 for firms and £100 for individuals. As CRL note in the addendum application, the proposed PCF of £200 for firms is similar to the PCF levied by ACCA in 2020. The LSB notes that the PCF fees for firms and individuals proposed in the addendum application is significantly less than the PCF fees levied on other CILEX individuals and firms as set out in the full application.

17. The addendum application sets out that the PCF income collected from CRL/ACCA authorised persons will fund the cost of regulation provided by CRL only, and not any CILEX non-regulatory activities, because they are transferring from another approved regulator in 2021/2022. The November 2021 decision notes that 33% of PCF income collected from firms and individuals other than CRL/ACCA authorised persons will be retained by the approved regulator (CILEX).

Consultation and engagement

18. Paragraph 11 of the addendum application sets out that CRL consulted on the proposed fee for CRL/ACCA authorised persons between 21 January and 18 February 2021. It states that CRL sent the PCF consultation to the 71 ACCA individuals who had been in contact since the transfer arrangements process opened, and that CRL received 22 responses to its consultation. The consultation was also published on CRL's website.

19. The consultation set out in the addendum application included the fees for both CRL/ACCA authorised persons both firms and individuals and the fees for CRL firms and individuals. Respondents were asked if they agreed with the proposed CRL/ACCA authorised persons PCF for 2022 and asked to share data for diversity purposes.

20. The addendum application states that 73% of the respondents supported the proposed PCF and 27% did not and notes the concern that '*the costs being too high for an ancillary service provided by accountants'.* The addendum application sets out that while the PCF charged for an individual is slightly higher for a sole practitioner (one individual set up as a firm) at £300 vs £262 (based on ACCA's PCF for 2020), for a two-partner firm the cost is lower overall (£400 vs £524). Paragraph 17 notes that the proposed PCF for 2022 for/CLR authorised persons reflects the separation of regulation between legal services and accountancy services and as such CRL considers that the fee structure is proportionate.

21. The LSB welcomes that CRL has provided transparency and accountability for its activities by the steps it has taken to engage its regulated community. We note CRL consulted on the transfer route, proposals in the full application, as well as this addendum application. Further, we note that the addendum application also provides transparency on the consultation responses received and how these have been considered.

22. For next year's PCF application, we expect CRL to include all the relevant information for all its regulated community in one consultation and one application to the LSB.

Impact assessments

Equality Impact assessment

23. Paragraph 19 of the addendum application sets out that CRL collected EDI data as a part of the PCF survey as well as for all ACCA individuals applying to CRL for authorisation. CRL compared EDI data for respondents to the consultation with EDI data held for all ACCA probate individuals at CRL. Paragraph 21 of the addendum application explains that this analysis indicates that younger, white males who were educated independently and were not the first generation in their family to go to university were more likely to respond to the consultation than other groups. CRL draws the conclusion from this data that there is no evidence that the introduction of the proposed fees would have a disproportionate impact on any protected group.

24. We note that the addendum application makes reference to its consideration of equality issues. This is intended to address the regulatory objective of encouraging an independent, strong, diverse and effective profession. We note that the vast majority of respondents to CRL's consultation were not from protected groups. As CRL considers further authorisation applications from firms and individuals, we would expect to see increased engagement with this section of its regulated community, and a more meaningful assessment of the equality impact of the PCF in the next application.

Decision

25. The LSB has approved the addendum application to the full application from CRL and CILEX to levy a PCF on CRL/ACCA regulated persons in 2022 under section 51 of the Act.

Summary of expectations for next application

- For next year's PCF application, we expect CRL to include all the relevant information for all its regulated community in one consultation and one application to the LSB.
- We also expect CRL to provide a more meaningful equality assessment which includes the impact of the PCF on the ACCA individuals that have joined its regulated community.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
6 May 2022