20 December 2022

LEGAL SERVICES BOARD

Approval of 2023 Practising Fees application made by the Chartered Institute of Legal Executives (CILEX) and CILEx Regulation Limited (CRL) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the "Act")

1. The LSB has approved a joint application made by CILEX and CRL to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of Practising Fees charged by approved regulators.

2. Practising Fees are 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 Practising Fees 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 (the "Rules")[1].

3. Practising Fees are payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee as 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. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (the "Guidance")[2] which gives guidance on each of the Rules.

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

Summary and overview of Practising Fees application and decision

6. The application submitted provides that the Practising Fees to be charged to individuals and firms remain at the same level as 2022. CILEX and CRL's projected total Practising Fees income for 2023 is £2,517,447 (an increase from the budgeted £2,403,056 in 2022). The application proposes for the Practising Fee for 2023 to be levied as follows:

[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**	**Proposed 2023**
PCF	CILEX Fellow	**£367**
PCF	Associate Prosecutor	**£271**
Practice Rights top up	CILEX Fellow with additional practice rights (per right)	**£60**
Practice Rights top up	Other CILEX members with additional practice rights (per right)	**£60**
Advocacy rights	CILEX Fellows with additional rights of audience	**£151 (every 3 years**
PCF	Non-member with practice rights	**£453**
Entity application/renewal	Entity	**See Appendix 1 to the application**
CILEx Practitioner (ACCA-Probate)	Probate Practice	**£100**
CILEX-ACCA Probate Entity	Probate Practice (no client money)	**£200**

	Non-ABS Entity		**ABS Entity**		**Renewal**	
Turnover	CRL (Client Money)	CRL (No Client Money)	CRL (Client Money)	CRL (No Client Money)	CRL (Client Money)	CRL (No Client Money)
£0-£100,000	£1260	£767	£2117	£1624	£1109	£616
£100,001 £250,000	£1512	£1075	£2369	£1931	£1361	£923
£250,001 £500,000	£1764	£1361	£2621	£2218	£1613	£1210
£500,001 £1m	£3377	£2570	£4234	£3427	£3226	£2419
£1m -£3m	£4990	£3578	£5846	£4435	£4838	£3427
£3m +	£6612	£4596	£7469	£5453	£6461	£4445

7. Of the total amount of Practising Fees to be collected (£2,517,447), £1,529,136 (60.7%) will be allocated to the regulatory body (CRL) and £821,686 (32.7%) will be retained by the approved regulator (CILEX). The remaining £166,625 (6.6%) will be the levy to help

fund the work of the Legal Ombudsman, Legal Services Board, and the Office for Professional Body Anti-Money Laundering Supervision.

8. We are satisfied that CILEX and CRL's activities for 2023, which will be funded by Practising Fees, fall within the permitted purposes, in compliance with section 51(2) of the Act. We are satisfied that CRL has set its budget independently from CILEX. On the basis of the application, including information provided in response to questions on it, we are satisfied that CILEX and CRL have set out how they each intend to discharge their regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.

9. We consider that the application provides meaningful consideration of equality issues at section 6 of the application. These issues are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse, and effective profession.

10. We consider that CILEX and CRL have given due consideration to the impact of the level of the Practising Fees on the conduct of legal services by their regulated community in setting the Practising Fees for 2023.

11. The LSB's decision is to approve in full the levels of the Practising Fees for 2023 to be charged to individuals and firms as set out in the application by CILEX and CRL.

LSB assessment

Consideration of inflationary pressures

12. The application explained at Paragraph 28 that budgets have been able to increase without the need to increase the level of the Practising Fee as the estimated number of renewals is expected to be higher for 2023.

13. Our analysis noted that Practising Fee income for 2022, set out at Paragraph 50 of the application, amounts to £2,461,820 in total. Comparing this to anticipated income in 2023 of £2,517,447 provides an increase of £55,627 across both CILEX and CRL.

14. The application also confirmed the intention of CILEX to absorb inflationary and additional costs as practising fees are a minor part of its income.

15. Given the minimal increase in income for CRL we asked what consideration it had given to the impact of expected increased costs in 2023 to its resourcing.

16. CRL explained that its budgeted income for 2023 was £70,597 higher than the amount budgeted (and received to date). This reflects an increase of 4.84%. It set out that this increase took account of increased staff costs, the fixed costs for shared services and a provision for some additional direct costs.

17. CRL also explained that its Board has decided to increase applications fees (non-practising fee income) from 1 March 2023 to account for inflationary pressures and the possibility of a lower than usual number of CILEX members who will make such applications in 2023.

18. We expect next year's application to provide additional detail on the difference in total budgets from year to year with an explanation setting out plainly what any increase is expected to fund or how any reduction has been achieved.

Allocation of PCF between CILEX and CRL

19. The application confirms that any surplus received in 2022 will be distributed between CILEX and CRL in accordance with the agreed Practising Fee percentage split set. The treatment of historic actual Practising Fees received that varied from budgeted estimates forms part of the LSB investigation currently underway in relation to ongoing disputes and disagreements between CILEX and CRL.

20. We asked CILEX and CRL to confirm what the position will be if there is a surplus or deficit in 2023.

21. CILEX and CRL confirmed that Practising Fees received will be reconciled on an annual basis going forward and will be split in accordance with the agreed practising fee ratio.

Variances in spending

22. The application set out variances between CRL's budget for 2022 and what was actually spent. Our initial assessment of the application left us with some questions on some of the variances reported. As a consequence, we asked CRL to provide a further explanation of the variances in relation to supervision (increased by 30%) and enforcement (reduced by 9.94%).

23. For enforcement, CRL explained that its restructure in 2022 provided more flexibility for its team. This enabled staff to be seconded into the team as needed. It explained further that the enforcement team has budget lines that cover room hire, external advocacy and legal advice. In 2022 these lines were surplus to what was used and as a result spend on enforcement was reduced.

24. For supervision, CRL explained that non-practising fee income is used to offset the practising fees used to fund its supervisory function. It explained that CRL's firms pay a renewal fee each year separate from the Practising Fee. Due to a reduction in firms, this non-practising fee income has reduced. This has meant that a greater proportion of the cost of supervision has been covered from Practising Fees which is reflected in the increased cost.

25. We asked CRL to explain what renewal fee was charged to its firms that was separate from the Practising Fee. CRL explained, that the renewal fee is not separate to the Practising Fee. It is in fact the Practising Fee charged to firms set out at Appendix 1 to the application. However, as it was only received by CRL it is not internally referred to as Practising Fee income received jointly by CILEX and CRL.

Reserves

Reduction in CRL Working Capital Reserves

26. The application set out a significant reduction in the working capital reserves held by CRL by £320,094 (from £442,814 at the end of 2021 to an estimated £122,720 at the end of 2022). The application explained that when combined with the uncommitted funds held in the contingency reserves (£380,000), CRL was left with 3.6 times its monthly operating expenses and thus was within the expectations of its reserves policy and the target range in the LSB's Practising Fee Rules 2021.

27. We note that CRL's Reserves Policy provided at Appendix 5 to the application confirms at Paragraph 18 that the purpose of uncommitted reserves is to cover the following:

- Unexpected or exceptional costs
- Unexpected, short-term fluctuations in income
- A short-term loss in practising fee income caused by e.g., our [ie CRL's] PCF application being delayed or refused.

28. The application also confirmed that CRL currently anticipates an additional £35,000 to be added to its working capital reserve from its share of Practising Fees received in excess of what was budgeted for in 2022.

29. Given that uncommitted reserves are currently just 3.6 times CRL's monthly operating expenses, we asked CILEX and CRL to provide us with additional insight on how unplanned expenditure would be funded in 2023.

30. CRL responded to confirm that despite a reduction in reserves it has remained within the target reserves set by its own policy and by the LSB's Practising Fee Rules and Guidance. It explained that should a significant unanticipated cost arise, CRL would utilise its available reserves and would seek to replenish its reserves in future years.

Committed reserves

31. The Practising Fee application submitted in 2021 included an itemised list of committed reserves for 2022 amounting to £220,662. We asked CRL to set out its actual spending from reserves compared to the reserves it had identified as committed in the 2021 application.

32. CRL responded with a table setting out its projected reserves spending to year end as follows:

Reason for committed reserve (2021)	**Budgeted committed spend**	**Actual reserves used**
Items carried forward	£22,119	Decommitted and reallocated
Delayed spending owing to the pandemic	£80,052	Decommitted and reallocated
Maternity cover (unrecoverable)	£40,000	£40,000
Research	£50,000	£21,000
Advices	£10,000	Decommitted and reallocated
Additional premises (owing to pandemic)	£8,000	Decommitted and reallocated
Contribution to CRL 2022 budget	£10,491	£10,491
Total committed reserves brought forward	**£220,662**	**£71,491**
Additional spending from reserves		
Additional CEO salary (special leave)		£38,620
Partial Exempt VAT (non-reclaimable)		£50,616
Professional Fees – Comms		£15,000
Professional Fees – Disbursements		£59,843
Professional Fees – Legal fees		£164,987

Total committed reserves released		**£400,557**

33. The information supplied demonstrated a significant change from planned spending from reserves. In future Practising Fee applications, we expect CILEX and CRL to transparently set out any significant changes to spending from reserves along with a more fulsome explanation of changes than was set out in this year's application. This will go towards addressing the overarching criteria set out in the Rules for transparency and accountability to those relevant authorised persons who pay the Practising Fee.

CRL Reserves Policy

34. We note that CRL's updated reserves policy confirms that CRL has resolved to hold and manage its own reserves with effect from July 2022. Presently, issues arising out of the Internal Governance Rules dispute referred to the LSB by CRL regarding financial matters, including the transfer of reserves, are subject to an investigation by the LSB. The consequence of this is that, despite the content of the reserves policy, there is an ongoing dispute as to who should hold CRL's contingency reserves. We express no view on that issue in this Decision Notice.

35. CRL's reserves policy confirms that it will be reviewed annually as part of the practising fee setting process. We expect CRL's annual review of its reserves policy to take account of the findings of the LSB's investigation once it has been completed.

Planned spending 2023

36. We note that CRL's unanticipated spending on professional fees amounted to £239,830 in 2022. This figure represents approximately 13.5% of CRL's total income in 2022 (£1,458,539 from Practising Fees and £323,513 from other sources of income). Further spending on professional fees in 2023 can be anticipated. CRL should take steps to ensure that when it reflects on its spending it provides an account to its regulated community on key spending and how that spending aligns with the proper discharge of its regulatory functions in compliance with the regulatory objectives.

37. The Practising Fees application did not provide any details of committed reserves from CRL's Working Capital Reserves. We asked CILEX and CRL to confirm whether there were any planned committed calls on these reserves in 2023.

38. The response received from CILEX and CRL confirmed that at present, CRL does not have any committed calls on reserves beyond those held in the Contingency Reserve amounting to £250,000 committed for its compensation fund and £70,000 for interventions work.

39. Given the absence of any planned spending from reserves in 2023 we asked CILEX and CRL to confirm how CRL had budgeted for spending on communications and legal work in 2023.

40. CRL explained that it has made provision for items required in 2023 within its 2023 budget. It further explained that the table under Paragraph 32 above includes budgeted spend to the year-end which includes anticipated legal fees until the end of the LSB's investigation in February 2023.

41. The unplanned spending from uncommitted reserves in 2022 amounted to £329,066. Should CRL spend a similar amount from its total reserves in 2023 it would be left with

reserves significantly below its target. We expect CRL to carefully consider the impact of any spending from its uncommitted reserves and to ensure that its plans for the next PCF cycle provide for sufficient reserves in future years.

Decision

42. The LSB has approved the Practising Fees application submitted by CILEX and CRL for 2023 under section 51 of the Act.

Summary of expectations for next application

43. We expect next year's application to provide additional detail on the difference in total budgets from year to year with an explanation setting out plainly what any increase is expected to fund or how any reduction has been achieved.

44. We expect CILEX and CRL to transparently set out any significant changes to spending from reserves along with a more fulsome explanation of changes than was set out in this year's application.

45. CRL's annual review of its reserves policy should take account of the findings of the LSB's investigation once it has been completed.

46. CRL is expected to carefully consider the impact of any spending from its uncommitted reserves and to ensure that its plans for the next PCF cycle provide for sufficient reserves in future years.

Chris Nichols, Director, Policy and Regulation
Acting under delegated authority granted by the Board of the Legal Services Board
20 December 2022