

Practising Certificate Fee (s51) application assessment

Approved Regulator: Chartered Institute of Legal Executives (CILEx)/CILEx Regulation

Part One: summary and recommendation

Summary

The fee proposals for 2017 are as follows:

Fee type:	Paid by:	2016	Proposed 2017	% Change
PCF	CILEx Fellow	£355	£364	+2.5%
PCF	Associate Prosecutor	£176	£220	+2.5%
Per practice right top up	CILEx Fellow with practice rights	£50	£60	+20%
Per practice right top up	CILEx member below Fellow grade with practice rights	£50	£60	+20%
PCF	Non-member of CILEx with practice rights	£450	£450	Same
Entity application/renewal	Entity	Variable as fee scale	+1.5%	

The CILEx Group total income is £10,016,986 which includes income to be raised from PCF totalling £2,335,184 for 2017. Forecast PCF income for 2017 is 23% of total group income (2016: 30%).

All of the PCF income has been attributed to regulatory permitted purposes activities, in line with the LSB's PCF Rules.

Recommendation

- That the application is approved
- That the approval letter comments on the following points:
 - PCF increase is in the context of CILEx Regulation working towards a model of full cost recovery, where the costs of regulatory and permitted purposes activities are met from PCF income.
 - Makes reference to underestimate of financial projections for costs and expenditure when developing the 2016 budget. While this was partly offset by transferring income from other charges, the underestimation and reassessment contributed to the need to increase PCF.

- Notes and welcomes reassurance that processes, reviews, and oversight by the Board and executive team, of financial performance, budgeting and forecasting, are now robust and fit for purpose.
- Record that we will be seeking an update in next year's application on the systems CILEx Group has put in place for accounting and management oversight so that we have full confidence in its budgeting arrangements and forecasting.
- Note that as take-up of entity regulation has been lower than envisaged it has not yet been possible for CILEx Regulation to derive unit costs, so it has not been able to build data on overall regulatory costs for entity regulation. This is why it decided to apply inflationary cost increases to entity fees of 1.5%.
- Note that with regard to additional reserved legal activities, the LSB will be interested next year in what progress has been made in CILEx Regulation plans to step up the approach to marketing practice rights. It is hoped this will increase the uptake and enable CILEx Regulation to calculate the true cost of delivering the various practice rights it now regulates.
- Record that we were pleased that the application complied with the revised LSB PCF Rules 2016 in providing a three-year budget forecast, given that increases in practising fees are sought.
- Note the CILEx Group aim of achieving a balance between the cost of regulatory and permitted purposes activity and income by 2019 while maintaining PCFs at the 2017 level over the three-year budget period. Also note and welcome the intention to stabilise and then to reduce PCFs when possible over the next few years.
- In respect of the Associate Prosecutor (AP) fee, which is increased by 25%, record we are aware this is paid by the Crown Prosecution Service (CPS) and not APs themselves. While the increase is high in percentage terms, the total cost to CPS is reduced by about £6,000 due to lower numbers of APs at CPS.
- Comment on the increase in consultation responses on the PCF.

Part Two: Assessment of the application against LSB acceptance criteria

1. Pre-submission	
Were there any pre-submission discussions or a draft application; were any issues identified	There was one pre-submission discussion; and the LSB reviewed the draft application, providing feedback on compliance with the revised PCF Rules 2016

<p>Were there any areas for improvement or specific issues in the last approval letter</p>	<p>In the approval letter for the 2015 fee application we:</p> <ul style="list-style-type: none"> ○ Noted that CILEx was making progress towards fees that will allow full recovery of the cost of regulatory and permitted purposes activities ○ Recognised that CILEx/CILEx Regulation is in a transitional period following the designation for new reserved legal activities and the commencement of entity regulation; that experience is needed to build the data on the true cost of these activities and that we are likely to look at this in more detail next year (see section 7 of this assessment).
2. Developing the application and budget	
<p>Is it clear that the regulatory arm has led the development of the application?</p>	<p>Yes. The application has been submitted jointly by CILEx and CILEx Regulation. CILEx Regulation has developed its own budget for both the historic and new activities independently, identifying separately the costs for individual and entity regulation.</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> • Is it clear how the budget has been arrived at • Is there evidence that the immediate and medium terms needs have been taken into account • If the proposal is to increase the PCF, does the application include a forecast budget for the current application and, where available, the next three years and estimate of PCF for the next three years? 	<p>Yes. The application Section 3.2 explains the development of the 2017 budget.</p> <p>Yes. Section 3.2 explains that restructuring in the CILEx Group resulted in a reduction from six departments to five which has reduced the cost base. The effects have been incorporated into the 2017 budget. See also forecast budget information below.</p> <p>Yes. CILEx Group three-year forecast provided in section 3.3 and in Appendix 2 to the application. The 2017 budget is in the context of achieving a balance between the cost of regulatory and permitted purposes activity and income by 2019. The aim is for this to be accomplished while maintaining the PCF at the 2017 £364 level over the three year period. The application states that this approach avoids further increases to the PCF until, in year three, the costs of regulation are fully met by income.</p>

<ul style="list-style-type: none"> • Are the contingency fund arrangements clear 	<p>CILEx Group is aiming to achieve efficiencies to reduce costs in real terms over the three-year period. It says that this will help to reduce spend on permitted purposes as well as other activities carried out by CILEx. CILEx is also looking for efficiencies from investment in technology, although this is not yet quantifiable.</p> <p>CILEx holds substantial reserves of £5.7m (2.5 times the level of PCF income in the 2017 budget). CILEx Regulation holds no reserves. The CILEx Reserves Policy is to hold at least 12 months' budgeted PCF and membership income in reserve. CILEx will meet reasonable funding requirements of CILEx Regulation under protocols, including exceptional costs – e.g. in relation to staffing or legal claims, or new regulatory developments. CILEx Regulation is confident that resources are available should they be required. Reserves are available to the CILEx Group as a whole and not just to CILEx Regulation. The application adds that the PCF budgeted for 2017 is intended to deliver a balanced budget.</p>
<p><i>Consultation</i></p> <ul style="list-style-type: none"> • Has the proposed fee been consulted on – if so summarise. • Was the consultation clear about the level of fee and how it will be collected • Has feedback been fully considered 	<p>Yes. Each group of fee payers were invited to comment on the proposed fee levels and the application shows how CILEx Regulation considered this feedback. The consultation letters were included in the appendices to the application and were clear about the level of the fee.</p> <p>For Fellows the consultation period ran from 8 June to 12 July 2016. The consultation (Appendix 3) was emailed to 6,584 practising Fellows inviting responses online. The consultation was posted to a further 92 practising Fellows with no e-mail address registered with CILEx. 1,181 responses were received electronically. This represents an 8% increase against the 1,095 responses received in 2015. It is worth noting that this builds on 78% growth in responses achieved last year.</p> <p>Consultations on practice fees, entity fees and Compensation Fund contributions were combined, as the target group was the same. The consultation (Appendix 5) ran from 13 June to 12 July 2016 through a number of channels. A total of 17 responses were received (Appendix 6) with voting spread across the fee options. The responses were considered by the CILEx Regulation Board at its meeting on 14 July 2016.</p>

	<p>The PCF for each Associate Prosecutor (AP) is paid by the Crown Prosecution Service (CPS) and so consultation was with CPS rather than individual APs. CPS requested a special discounted rate, a freeze going forward or capping in accordance with the consumer price index. CILEx argued it had effectively a cross subsidy arrangement with the CPS in relation to the costs of membership and regulation of Associate Prosecutors over the last eight years. Now that CILEx was working toward full cost recovery it was not possible to offer a discounted rate or to freeze or cap the AP fee. However, the fee includes an element of reduction for permitted purposes activity to reflect AP focused activity carried out by CILEx, compared to that carried out for a CILEx Fellow. While the increase is high in percentage terms, the total cost to CPS is reduced by about £6k due to reduced numbers of APs at CPS. The CPS did not make any representation to the LSB about the level of the AP fee.</p>
<p><i>Clear and transparent</i></p> <ul style="list-style-type: none"> • Is the information provided to fee payers on the level of fee clear and transparent • When was/is this issued to fee payers 	<p>Yes. As above. The consultation papers in the appendices set out the proposed fees clearly. The letter to Fellows set out how the options were arrived at and how the income derived from the PCF is spent across regulated activities and permitted purposes. A final copy of the fees will be sent to all fee payers (once approved by the LSB).</p>
<p>3. Permitted purposes</p>	
<ul style="list-style-type: none"> • Is there evidence that the PCF income is used solely for permitted purposes • Is any other income to be applied to permitted purposes 	<p>Yes. The total budget for all permitted purposes (£3,578,374) is set out in Appendix 1. It exceeds the expected PCF income of £2,335,184. The balance is met from other income (including education and training and application fees).</p> <p>The LSB was uncertain as to the amount of PCF going towards non-regulatory permitted purposes. CILEx Regulation confirmed that it used the phrases 'permitted purposes' and 'other permitted purposes' to denote 'non-regulatory permitted purposes'.</p> <p>CILEx Regulation further confirmed that the submission for the 2017 PCF shows a declining proportion of the</p>

PCF going to non-regulatory permitted purposes for 2017-2019. The figures provided by CILEx Regulation in the table below summarise the total PCF income split between 'Regulatory activities' and 'Non-regulatory permitted purposes'.

PCF Income (£s)	2017	2018	2019
Regulatory activities	£1,796,912 76.9%	£1,810,770 77.5%	£1,825,391 78.2%
Non-regulatory permitted activities	£538,272 23.1%	£524,414 22.5%	£509,793 21.8%

4. Regulatory functions

Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions

Yes. The CILEx Regulation Direct expenditure is separately identified in the draft budgets (total £1,558,165 – inclusive of LSB/OLC levies of £130,304).

Are any shared services clearly explained

The application shows how much of CILEx departments' expenditure is allocated to permitted purposes; this is in line with previous years.

In preparation for greater regulatory independence and establishing the true cost of regulation, the 2017 budget includes an allocation of shared services to CILEx Regulation totalling £109.2k.

This budget includes a line for central resources of £907,709 in total, of which £579,712 is allocated to permitted purposes (i.e. regulatory activities and other permitted purposes).

5. Regulatory and equality impact assessment (optional requirement)

- Completed and included?
- If not included, is there an explanation of the potential impact

Yes. Section 6 of the application covers regulatory and diversity impact assessment. This explains that the CILEx Group has a Single Equality and Diversity Scheme and Action Plan.

- Does the application contain commentary on the regulatory

Yes. The application contains commentary against the Regulatory Objectives and the Better Regulation Principles and concludes that the process for

objectives and the Better Regulation Principles	determining the PCF has been targeted solely at the regulatory and permitted purposes. It says it has taken a proportionate approach in line with CILEx Group three-year budget plans.
6. Consultation with non-commercial bodies (optional requirement)	
<ul style="list-style-type: none"> • Does the application include a description of the steps taken • Have the proposed fees been shared with such bodies • What was the response 	<p>There was no specific consultation with non-commercial bodies other than the CPS (see section 2 above).</p> <p>The application records that CILEx member data shows that the proportion of Fellows providing non-commercial legal services is not significant and not sufficiently relevant to that branch of the profession to warrant consultation with charities.</p>
7. LSB Review	
Have we consulted with any other body on the application	Not considered necessary for this application.
Were any issues raised by LSB colleagues from the first review	<p>Three substantive matters in relation to the budget and PCF aspects were raised:</p> <ul style="list-style-type: none"> • Follow up to the decision letter from last year on progress of CILEx Regulation building data on the true regulatory cost of regulating entities and its new practice rights. The recommendation section of this assessment records the current position. • We sought clarification from CILEx Regulation on CILEx Regulation Direct Expenditure, which was shown as higher for 2016 in this application than was shown in last year's. It was explained by CILEx Regulation that there had been underestimation of costs and expenditure. Forecasts and projections were reviewed and re-worked. This identified that direct expenditure had been understated by £76,929 and overhead expenditure including staff costs, understated by £260,401. This was partly offset by transferring rights applications income of £122,130 (income from Fellowship applications, practice rights and accreditation fees) giving a net difference between the two forecasts of £215,200. Nonetheless, the underestimation and subsequent reassessment also contributed to the need to increase the PCF. CILEx Regulation provided reassurance that its processes, reviews, and oversight by its current Board and executive team of financial

	<p>performance, budgeting and forecasting, are robust and fit for purpose.</p> <ul style="list-style-type: none">• We sought clarification from CILEx Regulation as the amount of PCF spent on permitted purposes, as we were unclear of the definition of permitted purposes used in the application. CILEx Regulation explained the position and this is recorded in section 3 of this assessment.
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Paul Greening
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18 October 2016