

PCF application to LSB

25 August 2017

Introduction

1. CILEx is an Approved Regulator under the Legal Services Act 2007 for Chartered Legal Executives, Associate Prosecutors, CILEx Practitioners and entities. CILEx delegates its regulatory functions to CILEx Regulation.
2. This submission sets out fees proposed to be charged for subscription year January to December 2018 to the following:
 - Chartered Legal Executives (CILEx Fellows);
 - Associate Prosecutor members of CILEx;
 - CILEx Practitioners; and
 - Entities.
3. CILEx Fellows are regulated for the reserved activity of administration of oaths. Associate Prosecutor members are employed by the CPS and authorised to conduct litigation and exercise rights of audience.
4. CILEx Practitioners are authorised to provide one or more of the following reserved or regulated legal activities:
 - conduct of litigation
 - rights of audience
 - probate
 - reserved instrument activities
 - immigration advice and services
5. Entities may apply for authorisation to deliver one or more of the reserved or regulated legal activities. Entities pay an annual regulatory fee and make a contribution to the Compensation Fund.
6. The CILEx Regulation Board determined the regulatory costs for the 2018 budget at its February 2017 meeting. CILEx Council agreed proposals for 2018 fees at its July 2017 meeting.
7. CILEx Regulation continues to set its budget independently against its strategy and annual business plan. A review was undertaken in December 2015 to determine the strategic aims and key activities for 2016-19 and this has been re-visited in the first quarter of 2017 to identify the resource needs of CILEx Regulation for 2018. Since that time, additional resource requirements have been identified in relation to OPBAS and the CMA and these will be accounted for in the final CILEx Group budget to be agreed by the CILEx Council at its meeting in November 2017. These additional requirements will not impact on the PCF for 2018.

8. CILEx confirms that requests for reasonable additional resources will continue to be met. CILEx Regulation confirms it has no concerns about securing such resources.

Overview of fee proposals

The fee proposals for 2018 are as follows:

Fee type	Paid by	2017	Proposed 2018
PCF	CILEx Fellow	£364	£364 (no change)
PCF	Associate Prosecutor	£220	£253 (15% increase)
Practice Rights top up	CILEx Fellow with additional practice rights (per right)	£60	£60 (no change)
Practice Rights top up	Other CILEx members with additional practice rights (per right)	£60	£60 (no change)
PCF	Non-member with practice rights	£450	£450 (no change)
Entity application/renewal	Entity	Variable as fee scale	No change from 2017

9. The CILEx Group draft budget identifies that the regulatory activities, which includes both the direct regulatory costs and a contribution towards the permitted purposes will be covered by a PCF as set out in the table above. The PCF for all groups required to pay a practising fee has been held at the 2017 rates, with the exception of the Associate Prosecutors, for which the PCF has been increased by 15% to £253, following a consultation with the Crown Prosecution Service.

Budget setting, forecasting and financial oversight

10. When the LSB approved the PCF for the 2017 year, it requested additional information be supplied in relation to the processes, reviews and oversight in relation to financial performance, budgeting and forecasting, so that the LSB could be assured that these were robust and fit for purpose in order to provide full confidence.
11. The CILEx Group has strengthened its financial oversight arrangements since 2016, in the following ways:
- The appointment of a management accountant as a dedicated resource supporting CILEx Regulation
 - Draft forecasts and budgets are developed by the CILEx Regulation senior management team (SMT), with advice from and financial modelling carried out by the management accountant
 - The draft forecasts and budgets are scrutinised and approved by the CILEx Regulation Board
 - CILEx Regulation produces quarterly forecasts for the current financial year, in addition to annual budgets and three-year forecasts
 - The CILEx Group produces mid-year reforecasts which are reviewed by each Group company's board and the CILEx Finance Committee

12. These arrangements provide a robust framework for the regular review of financial performance against budget and forecast for the SMTs (Senior Management Teams), committees and boards of each CILEx Group company.
13. The draft budget for 2018 was considered and agreed by the CILEx Regulation Board in February 2017.

Permitted purposes

14. The CILEx Director of Group Services and Chief Financial Officer produced details of the costs of permitted purposes activities following analysis by each relevant staff team of the permitted purposes work it undertakes, as a percentage of its work overall. The percentages identified as a result of this exercise were as follows:

CILEx department	All permitted purposes activities	Other activities	Total
Operations (including Membership, Sales and development, Awards and Education)	67.5%	32.5%	100%
Communications (including marketing and the Journal)	8%	92%	100%
Policy and Governance (formerly Regulatory Affairs)	40%	60%	100%
Central Resources and Administration	54%	46%	100%
CILEx Law School	0%	0%	0%

15. The percentages are based on the assessment of the CILEx Management Team of the amount of departmental time spent on all permitted purposes activities or in providing services to CILEx Regulation under a service level agreement. The 'other activities' column relates to activities which do not relate to regulatory activities or permitted purposes activities.

16. Activities which CILEx has identified as permitted purposes include:

- Operations: maintaining the Fellow, Associate Prosecutor and member database, issuing the PCF invoices, liaising with Authorised Persons, maintaining CPD records, providing information to CILEx Regulation about Authorised Persons and members, providing support to assure the quality of the academic qualifications, ensuring training and assessment is fit for purpose, providing assessment results for candidates by centre and learner, providing relevant committee meeting minutes, liaison with Ofqual, providing details of alleged misconduct, attending stakeholder meetings and attending professional institute forums
- Communications: providing the Journal online and in print, editorial support, educational articles, direct mailings to Authorised Persons, maintaining support for

- the CILEx Regulation website, CILEx Regulation publications, press releases, marketing plan and strategy, supporting marketing of new regulatory activity
- Policy and Governance: providing representation, liaison and support in the areas of law reform, policy, lobbying, equality and diversity, pro bono and judicial appointments, managing the relationship with the LSB, other Approved Regulators and government
 - Central Resources and Administration: HR, finance and accounting, procurement and facilities
17. The CILEx Group draft 2018 budget (Appendix 1) identifies that regulatory activities carried out by the Group will be covered by a PCF charged to Fellows of £364. This is held at the same level as for 2017 and is projected to generate £2,330,692. The PCF charged to Associate Prosecutors will be £253 for 2018, a 15% increase from 2017 and is expected to generate a further £42,504, creating a total income of £2,373,196.
18. Total net regulatory and permitted purposes expenditure is expected to only increase marginally in 2018 compared to 2017, by £28,008. The changes to the draft budgets for 2018 compared to the 2017 submission have resulted in a small increase in net costs in CILEx Regulation of £45,661, largely due to a reduction in other income (£38,800) and a small increase in expenditure (£6,861). This has been partially offset by a small reduction in permitted purposes expenditure in CILEx of £17,349. This has had the effect of marginally increasing the CILEx Regulation proportion of PCF from £192 to £195, and decreasing the CILEx permitted purposes proportion from £151 to £149.

Development of the 2018 draft budget

19. Following the restructure which took place in 2016 to address the issues which arose in the 2015 budget, a further restructure has taken place at CILEx and this has further reduced the cost base at the Chartered Institute.
20. This additional restructuring in the Chartered Institute has resulted in a reduction from five departments to four and has further reduced the cost base. The effects have been incorporated into the draft 2018 budget. The Group financial statements for 2016 demonstrate the much improved position, going from a loss before tax of £861,432 in 2015 to a profit before tax of £430,984 in 2016. This has replenished Group Reserves and enables the Group to make some strategic investments. The CILEx Group have this year, embarked on a major IT project to replace the current CRM (Customer Relationship Management) system, with the major spend occurring in 2018. This will mean that at an operational level, the Group is expecting to make a surplus, but the project expenditure is likely to result in an overall deficit of £200,000, funded out of Reserves. The draft budget for 2018 reflects this.
21. Following the additional measures taken to prepare for greater regulatory independence and establishing the true cost of regulation, the draft 2018 budget includes an additional allocation of shared services to CILEx Regulation, totalling £200,000 compared to £109,200 in 2017. This builds towards establishing a more appropriate basis for the recharging of the cost of accounting, HR, IT and facilities started in 2017. Prior to 2017, no charges were made to CILEx Regulation for these shared services. This is not a change in the basis of the calculation of the PCF but a change to the internal presentation of the split of the cost of regulation between

CILEx and CILEx Regulation. In terms of the 2017 PCF at £364, the proportion covering shared services was £17.11 (or 4.7%). For 2018 the equivalent figures are £30.66 (or 8.4%)

22. Appendix 1 shows the total CILEx Group draft budget for 2018. This analyses income and expenditure by regulatory-related activity, other permitted purposes activity (with a sub-total for total permitted purposes activity), other activities that are not regulatory or other permitted purposes activities, and grand total for the Group.

Regulatory Function

23. CILEx Regulation sets its budgets independently. CILEx Regulation Board determined its resource requirements for 2018 by considering the projected budget against its strategic aims. The budgets were considered at the CILEx Regulation Board meetings on 8 February 2017. The budget was thereafter incorporated into the CILEx Group draft budget.
24. Appendix 2 shows how PCF income is spent on regulatory activities, including CILEx Regulation.

Reserves and Contingency

25. CILEx Regulation holds no reserves. The CILEx Reserves Policy provides that it should hold at least 12 months' budgeted PCF and membership income in reserve.
26. Protocols between CILEx Regulation and CILEx provide that CILEx will meet reasonable funding requirements of CILEx Regulation, including exceptional costs – e.g. in relation to new regulatory developments such as the CMA project.
27. CILEx reserves currently stand at £6.6 million (2.8 times the level of PCF income in the 2018 budget). Although those reserves are available to the CILEx Group as a whole and not just to CILEx Regulation, CILEx Regulation is confident that resources are available should they be required. There has been no change to Reserves Policy although this is under review as part of the Group restructure.
28. As will be seen from the analysis of regulatory and permitted purposes costs in Appendix 1, the fees budgeted for 2018 are intended to deliver a balanced budget.
29. PCF and permitted purposes fees will not increase Group reserves.

Regulatory and Diversity Impact Assessment

30. The CILEx Group has a Single Equality and Diversity Scheme and Action Plan¹. The CILEx Group actively promotes equality against the required protected characteristics. The CILEx Group has due regard to advancing equality of opportunity when taking action to achieve its objectives. It identifies potential impact on various groups within its membership through the consultation with Fellows, the CPS, regulated community and potential applicants.

¹ The CILEx Group Equality and Diversity Action Plan 2016-2020 is available at: http://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity

Regulatory Objectives and Better Regulation Principles

31. CILEx Regulation and CILEx are aware of the importance of ensuring that the PCF covers the budget for activities that support the regulatory objectives set out in the Legal Services Act 2007. CILEx Regulation and CILEx are satisfied that PCF income will be spent solely on regulatory activities and permitted purposes that aim to promote adherence to the regulatory objectives e.g. authorisation and supervision, supporting members on the modernised CPD scheme, entity regulation (as applicable) together with providing advice and support to members to be able to meet new requirements.
32. CILEx Regulation and CILEx acted in accordance with the principles of proportionality, accountability, consistency, transparency and targeting, in determining and developing the PCF for 2018.
33. Transparency and accountability have been ensured through the manner in which consultation has been carried out with the CPS as described below.
34. Chartered Legal Executives are the voting members of the chartered body. They receive the CILEx Annual Report, incorporating annual audited accounts. They are invited to attend the Annual General Meeting and may raise issues there or in advance. No member who attended the AGM on 13 July 2017 raised concerns regarding the 2018 PCF.
35. The process for determining the PCF has been targeted solely at the regulatory and permitted purposes. A proportionate approach, in line with the CILEx original three-year budget plans (2017-2019), has been taken to determining the activity and thereby budgetary needs.

Non-Commercial Bodies and the Consumer Panel

36. There has been no consultation on the PCF for Fellows in 2018 and therefore there has been no consultation with non-commercial bodies. CILEx member data shows that the proportion of Fellows providing non-commercial legal services is not significant and not sufficiently relevant to this branch of the profession to warrant consultation with charities.

Chartered Legal Executives

37. The proposal for the 2018 PCF is to hold the fee at £364. Therefore there was no consultation with members for the 2018 proposal. This includes the LSB levy, for which there is no change proposed for the 2018 PCF. This proposal was agreed by CILEx Regulation Board at its meeting on 26 April 2017 and the CILEx Council at its meeting on 13 July 2017 subject to approval by the LSB.

Associate Prosecutors

Consultation options

38. In 2016, CILEx and CILEx Regulation created a 3-year phased increase on the PCF charged to Associate Prosecutors, with a view to bringing the fees charged to full cost recovery of regulatory costs by 2019. Proposals for consulting with the CPS for the 2018 PCF were as follows:

- £253 - a 15% increase representing a step towards full regulatory cost;
- £276.32 - a 25% increase representing full regulatory cost.

39. There was no direct consultation with individual Associate Prosecutors as the CPS funds their PCF.

Consultation process

40. A Memorandum of Understanding between the CPS, CILEx Regulation and CILEx provides that practice fees will be agreed each year. The approach to the development of the proposals was communicated to the CPS at a meeting on 20 May 2016 with their Senior Court Business Advisor, Operations Directorate, and followed up in writing in June 2016 with background information regarding the basis on which the proposed fee options had been arrived at. It was explained that the PCF comprised three elements:

- regulatory costs - the direct cost of regulation being the net cost calculated in the 2017 CILEx Regulation working budget;
- permitted purposes; and
- levies set by the LSB and Office for Legal Complaints.

41. CILEx Regulation explained that CILEx had for current and previous years set the PCF below the full cost of regulation and permitted purposes. In effect, CILEx as the representative body and Approved Regulator subsidised the cost of regulation. The environment had changed and legal regulators were working towards financial independence, with no reliance on the Approved Regulator subsidising shortfalls in PCF income. As in previous consultations with the CPS, the proposals aimed to prevent an ever-widening gap between regulatory cost and income.

42. It was further explained that adjusted criteria would apply for the calculation, compared to those used for Fellows. CILEx accepted that taking an approach based on Associate Prosecutors as a proportion of authorised persons as a whole, in the main areas of activity affecting them (membership, corporate affairs and central services) would not give a fair reflection of the Associate Prosecutor-focused activity carried out by CILEx. Associate Prosecutors had proved to be a low regulatory risk.

43. For consistency CILEx used the same basis to calculate the cost of regulating Associate Prosecutors as for Fellows. Not all of CILEx permitted purposes applied. Hence separate permitted purpose calculations had been used. Permitted purposes included maintenance of the Practitioner Directory, recording CPD, and dealing with payments were not applicable and were not taken into account in calculating the full regulatory cost.

Appendix 3 was shared with the CPS showing the figures used.

44. The number of Associate Prosecutors in CPS reduced from 180 in 2016 to 168 in 2017. On the basis of 180 Associate Prosecutors paying £220 in 2017, the total annual cost to the CPS was £39,600. On the basis of 168 Associate Prosecutors paying £253 or £276.32 in 2018 the total annual fee would be £42,504 or £46,421.76 respectively.

Outcomes

45. The CPS expressed disappointment at the rise in the 2018 PCF but accepted that it is a matter for the regulator to set the fee taking into account their representations and agreed to pay £253 per Associate Prosecutor for 2018.
46. The fee for 2018 is therefore proposed as £253.

Practice Rights, Entity Fees and Compensation Fund Contributions

Practice Rights

47. The proposal for the 2018 PCF is to hold the fee at £60 top up for a member and £450 for a non-member. Therefore there was no consultation with Practice Rights holders for the 2018 proposal. This was agreed by CILEx Council at its meeting on 13 July 2017 subject to approval by the LSB.

Entity application and renewal fee

48. The proposal for the 2018 PCF is to hold the fees as set out at Appendices 4 and 5. Therefore, there was no consultation with entities for the 2018 proposal. This was agreed by CILEx Council at its meeting on 13 July 2017 subject to approval by the LSB.

Compensation Fund contributions

49. For information purposes only:
50. The proposal for the 2018 compensation arrangements contributions is to hold the fees at the 2017 level.

Further information on the future of entity regulation at CILEx Regulation

51. When the LSB approved the PCF for the 2017 year, it requested additional information be supplied in relation to the progress being made in relation to entity regulation, in terms of new entities and marketing of the opportunities offered through entity regulation. Since 2017, CILEx Regulation has undertaken the following activities:
 - CILEx Regulation has a 5 year strategy to develop entity regulation to a break even position by 2021
 - Year 1 (2017) targeted 5 new entities in addition to the existing 5 entities regulated by CILEx Regulation. As at end July 2017, CRL has met this target and is likely to regulate 13 entities by the end of the year
 - The target for year 2 (2018) is for 11 new entities – including 1 ABS (subject to LSB approval of designation application) bringing the total number of regulated entities at the end of 2018 to 21
 - Regular modelling and reforecasting takes place and this process is due to start for the next period in the autumn. The decision was taken not to increase the regulatory fees for entity in 2018 as there is a balance between competitiveness in the market and full cost recovery. CILEx has agreed to fund this activity from CILEx reserves until the number of entities creates a break-even position, as it is considered to be a member benefit and forms part of the strategy to grow the membership at CILEx. As a result, there is also oversight of the progress on entity regulation by the Finance and Remuneration Committee at CILEx. By the end of 2018, CILEx Regulation

expects to be in a position to provide accurate and complete costs for the delivery of entity regulation

- CILEx is working with CILEx Regulation to develop an active marketing strategy for both practice rights (a feeder for entity regulation) and entity, following a review of the customer journey, which in turn enables CILEx Regulation to develop its supporting materials and website
- CILEx Regulation continues to work with other regulators to develop an approach for regulator switching and to address other regulatory barriers to entity regulation at CILEx Regulation such as access to lender panels and insurance services

Summary of 2018 proposals

52. The proposals for the 2018 PCF for those regulated by CILEx Regulation is as follows:

Paid by	Proposed 2018
CILEx Fellow	£364 (no change)
Associate Prosecutor	£253 (15% increase)
CILEx Fellow with additional practice rights (per right)	£60 (no change)
Other CILEx members with additional practice rights (per right)	£60 (no change)
Non-member with practice rights	£450 (no change)
Entity	No change from 2017

Appendices:

Appendix 1: CILEx 2018 draft Budget

Appendix 2: CILEx 2018 draft Budget & PCF calculations

Appendix 3: CILEx 2018 draft Budget & PCF calculations for consultation with CPS on Associate Prosecutor fee

Appendix 4: Entity application fees

Appendix 5: Entity renewal fees

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