

Practising Certificate Fee (s51) application assessment

Approved regulator: ICAEW
PCF year: 1 January 2018 to 31 December 2018

Part One – Summary and recommendation

Summary

A 1% increase in firm registration authorising and licensing fee.

Example fee changes are illustrated below based on the 1.0% increase recommendation:

	2017 fee	2018 fee
Authorised firm		
Single principal, 1 office	£350	£353
2-5 principals, 1 office	£610	£616
Licensed firm		
Single principal, 1 office	£350	£353
6-9 principals, 2-10 offices	£9,900	£9,999

Recommendation

We recommend that the PCF is approved under section 51 of the Legal Services Act and that the decision letter:

- Re-confirms that the ICAEW Probate Fee is a “practising fee” within section 51 of the Act since payment is a condition which must be satisfied for the regulated person to be authorised by the approved regulator.
- Emphasises that the LSB has taken an appropriate and proportionate approach to its assessment of the application, taking into account that the number of ICAEW members undertaking probate is a low proportion of the overall ICAEW membership and that it is a small increase and the first increase since ICAEW commenced regulating probate.
- Reiterate that while the LSB has taken a proportionate approach it still needs sufficient information to understand the rationale for increases, and for this to be transparent to the regulated community who pay the fee.
- Recognises that while further information was forwarded by the ICAEW which helped us clarify the position, for future applications where there is a proposal to increase the fee, we will expect a little more detail, particularly in respect of costs and expenditure.
- Proposes a staff level meeting ahead of the next application between LSB/ICAEW colleagues.
- Comments that the ICAEW should consider conducting appropriate level of consultation with the regulated community.



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	<p>No. Not on the detail of the application. There was a discussion in the context of a meeting in respect of the ICAEW's approved regulator and licensing authority application to extend the scope of its regulation.</p> <p>It was agreed at this that any increase in fees for firms undertaking legal activity (including for probate) would need to be assessed and approved, albeit proportionately given ICAEW's circumstances, under s51 of the Legal Services Act.</p>
Were there any areas for improvement or specific issues in the last approval letter	Not applicable.
2. Developing the application and budget	
Is it clear that the regulatory arm has led the development of the application?	<p>Yes. The Probate Committee, with the approval from the LSB, sets the level of regulatory fee and levy. The proposal to increase the fees for 2018 was shared with the ICAEW Regulatory Board, but this was on a 'noting' basis only. The decision on the increase rests with the Probate Committee.</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> Is it clear how the budget has been arrived at 	<p>Yes. The application explains that the probate budget and financial strategy addresses the challenge of estimating future firm volumes for registration, expectations from the oversight bodies, short and long term compensation scheme funding, return of original investment and, crucially, of providing sufficient resources in order to:</p> <ul style="list-style-type: none"> carry out statutory and regulatory functions, deliver a range of services, such as quality assurance and conduct address potential changes in the relevant regulatory and legal environment.
<ul style="list-style-type: none"> Is there evidence that the immediate and medium terms needs have been taken into account? 	<p>Yes.</p> <p>The LSB requested additional information on costs to ascertain what is taken into account when assessing resource needs and matching this with the level of increase. The ICAEW further explained that under the principle of the self-financing model, income levels are estimated to represent estimated cost levels.</p>

<ul style="list-style-type: none"> • Are the contingency fund arrangements clear 	<p>Costs of delivery include; staff, committee, legal, overheads, compensation scheme, insurance, research and project costs. Staff costs include administration, registration, policy, quality assurance and conduct. Overheads include property, administration, systems and support costs.</p> <p>Probate budgeted income is sourced from firm registration fees and a levy. The registration income is calculated to cover, for example the expected operational costs including staffing, office and project costs and an allocation of ICAEW overhead. The levy income is used to source funding for the operation and building of a compensation scheme fund and the associated annual insurance.</p> <p>With regards to probate regulation, the ICAEW also has targets (all achieved in 2016), which includes ensuring that the Probate function is self-financing; that it meets or beats target funding for the compensation scheme; and that ICAEW reserves meet its authorising and licensing requirement.</p> <p>The expenditure analysis for 2016 showed that of total income of £576k – total expenditure was £532, percentage split at follows:</p> <p>Compensation scheme and insurance – 52% Staff – 32% Overheads - 8% Probate Committee allowance costs – 5% Legal costs – 3%</p> <p>The ICAEW confirmed that it did not expect a significant shift in the percentage allocation of expenditure for 2017.</p> <p>Yes. The application states that based on a forecast and estimated profile of firms including their size (number of principals and offices), and growth in authorisation/licensing from 1 January 2017 to 2018, registration income for 2018 is expected to be c£400k, with a further c£250k income generated from the levy in order to fund the ongoing establishment and operation of the compensation scheme and its associated insurance.</p>
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<p>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>	<p>No, but not needed for this particular application. While the proposal is to increase PCF by 1%, it is the first such increase since the ICAEW was designated as an approved regulator and licensing authority for probate. Probate only forms a small part of ICAEW's overall budget and it was not considered proportionate to request a three-year budget in this case. There is no budget subsidy to probate activities from ICAEW membership subscriptions, member practising certificate fees or other areas of regulation.</p> <p>The LSB did request additional information on the ICEAW's most recent expenditure analysis.</p> <p>The ICAEW further explained that it operates a self-financing model so the income provides for the costs including delivery, comp scheme, insurance, return on original investment and so on. By default by describing income the ICAEW is describing cost.</p> <p>It added that were income to exceed costs the balance would flow to the compensation scheme.</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>No. As this is the first increase since ICAEW began regulating probate, and it has only increased by 1%. However, this is something we will want to comment on in the decision letter in terms of future applications to increase the fee.</p> <p>Not applicable.</p> <p>Not applicable.</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>A reference to the fees scale is included on probate fee pro-forma invoices which were prepared for distribution in November if the fee is approved.</p>
<p>3. Permitted purposes</p>	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes. The fee is only used for the regulation of probate activities.</p>

Is any other income to be applied to permitted purposes	No.
4. Regulatory functions	
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	100%.
Are any shared services clearly explained	Yes. The ICAEW's probate regulatory responsibilities are supported by ICAEW central services.

5. Regulatory and equality impact assessment (optional requirement)	
<ul style="list-style-type: none"> Completed and included? If not included, is there an explanation of the potential impact Does the application contain commentary on the regulatory objective and the Better Regulation Principles 	No.
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 	No.
7. LSB Review	
Have we consulted with any other body on the application	Not considered necessary.
Were any issues raised by LSB colleagues from the first review?	<p>The initial application did not include sufficient information on expenditure. We are satisfied within the context of ICAEW's operational arrangements and that it is the first increase in fee since the ICAEW commenced regulation of probate, that the additional information provided is satisfactory on this occasion. However, for future applications we will expect, for the purposes of transparency, greater information on expenditure and explanation of the rationale for the increase than the high level reasons provided. This is so we can be satisfied that any increase is justified to meet expenditure needs.</p> <p>In addition, we noted that the ICAEW regulated community undertaking probate activity were not consulted on the level of the fee. In order to make the process transparent we will also record in the decision letter that the ICAEW should seek to consult when it proposes to increase the fee.</p>

Paul Greening
Regulatory Associate
20 October 2017