

Practising Certificate Fee (s51) application assessment

Approved Regulator: **The Council for Licensed Conveyancers**

Part One: Summary and recommendation

Summary

- Licence Fees payable by CLC Lawyers for providing conveyancing services or probate services remain at £400;
- Licence Fees payable by CLC Lawyers for providing conveyancing and probate services remain at £475;
- Base Rate Practice Fee payable by each CLC Practice remains at 1.1% of turnover applying the current tiers as follows):

Turnover Banding		Practice Fee payable				
From	To	Minimum Fee in Band				
0 and	100,000	856	or	1.2%	Of Turnover	Whichever is the greater
		Minimum Fee in Band			On Turnover in excess of	
100,001	500,000	1,200	plus	1.1%	100,000	
500,001	3,000,000	5,600	plus	1.0%	500,000	
3,000,000		30,600	plus	0.9%	3,000,000	

The total projected funding requirement for 2018 is £2,749,675, compared to £2,482,082 forecast outturn for 2017. It is estimated that the Practice Fee will generate an income of £2,176,428. Taken with the Licence Fee and other income, there will be a total projected income for 2018 of £2,770,081.

Compensation Fund contribution payable by each CLC Practice remains at 0.4% of turnover applying the current tiers as follows:

Turnover Banding		Compensation Fund contribution				
		Minimum Fee in Band				
Between	0 and	£100,000	£500			
		Minimum Fee in Band			On Turnover in excess of	

Between	£100,001 and	£500,000	£500	plus	0.4%	£100,000
Between	£500,001 and	£3,000,000	£2,100	plus	0.3%	£500,000
Over	£3,000,000		£9,600	plus	0.2%	£3,000,000

This is the same level as set since 2012.

Recommendation

We recommend that the CLC practising certificate fee for 2017/18 is approved under section 51 of the Legal Services Act.

No issues to raise in the decision letter.

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 were no formal pre-submission discussions.
Were there any areas for improvement or specific issues in the last approval letter	There were no areas for improvement in last year's approval.
2. Developing the application and budget	
Is it clear that the regulatory arm has led the development of the application?	Yes - the CLC has only regulatory functions.
<p><i>Budget</i></p> <ul style="list-style-type: none"> Is it clear how the budget has been arrived at 	<p>Yes. The final budget for 2018 has yet to be agreed. Based on the Forecast of the Outturn for 2017 and for the purposes of this application, it has produced a projection of operational expenditure for 2018 of £2,749,675. The 2017 forecast using actuals to June 2017 is £2,482,082. This is a variation of +11% (£267,593).</p> <p>There is an established budget and financial control process which is described in paragraph 6 of the application. Having set its strategy and business plan the CLC develops a budget based on</p> <ul style="list-style-type: none"> Resources needed to deliver strategic priorities and business plan objectives (including human resource) Known commitments (e.g. LSB/Legal Ombudsman levy) Known exceptional/ad hoc items. <p>Fees are calculated after taking into account other income and charges.</p> <p>The budget is approved by the CLC Council and subject to formal review after six months and on other occasions depending on circumstances.</p>
<ul style="list-style-type: none"> Is there evidence that the immediate and medium terms needs have been taken into account 	<p>Yes. As noted in previous two year's assessment, budgetary controls were reviewed by Internal Auditors in June 2014 which concluded that management could take "reasonable assurance" that the controls mitigate the risks.</p> <p>This year's application sets out the CLC's Business Plan commitments for 2017/18:</p>

<ul style="list-style-type: none"> • Are the contingency fund arrangements clear 	<p>In addition to operational objectives, the 2017 Business Plan commits the CLC to:</p> <ul style="list-style-type: none"> a) review its regulatory arrangements b) focus on consumers c) engage with the Regulated Community and Stakeholders. d) continue to press for reform of legal services for better consumer outcomes e) strengthen its infrastructure. <p>Yes. Set out in paragraph 22 of the application. CLC Compensation Fund Operating Framework expressly reserves to the CLC the right to make a specific levy. It is envisaged that this will only be required when it is anticipated there is likely to be a substantial payment(s) out of the Compensation Fund. The last time the CLC directed the payment of such a levy in addition to the annual contribution was in the mid 1990s. For this purpose, the CLC reserves the right to transfer the balance (assuming sufficient funds were to be available) out of the Practice Fees or Licence Fees collected in the first instance before approaching the profession to recoup those monies at an appropriate stage. This approach reduces the costs associated with the collection of a special levy outside the normal cycle for collection of regulatory fees.</p> <p>Reserves for the Compensation Fund stood at £4.22 million in December 2016 and are budgeted at the end of 2017 to be £4.60 million, in excess of the minimum level of reserves which is currently set at £2 million.</p> <table border="1" data-bbox="802 1547 1385 1733"> <thead> <tr> <th>2015</th> <th>2016</th> <th>Dec 2017</th> <th>Dec 2018</th> </tr> </thead> <tbody> <tr> <td>Actual</td> <td>Actual</td> <td>Forecast</td> <td>Estimated</td> </tr> <tr> <td>£ million</td> <td>£ million</td> <td>£ million</td> <td>£ million</td> </tr> <tr> <td>4.94</td> <td>6.22</td> <td>6.60</td> <td>7.03</td> </tr> </tbody> </table> <p>See para x regarding the reserves.</p>	2015	2016	Dec 2017	Dec 2018	Actual	Actual	Forecast	Estimated	£ million	£ million	£ million	£ million	4.94	6.22	6.60	7.03
2015	2016	Dec 2017	Dec 2018														
Actual	Actual	Forecast	Estimated														
£ million	£ million	£ million	£ million														
4.94	6.22	6.60	7.03														
<p><i>Consultation</i></p> <ul style="list-style-type: none"> • Has the proposed fee been consulted on – if so summarise 	<p>Yes. The CLC published a consultation on the current fee structure in May and which ended on 23 June 2017. The consultation was promoted in</p>																

<ul style="list-style-type: none"> • Was the consultation clear about the level of fee and how it will be collected • Has feedback been fully considered 	<p>newsletters to the profession, on the website and in direct emails. There were two responses, both of which supported the proposals set out in the consultation paper.</p> <p>Yes.</p> <p>Yes. Paragraph 4 explains that one respondent suggested that the fee rates should be set to generate slightly more than a nominal surplus during years where practices turnover is increasing to help boost the reserves and cushion the effect of any fee increase that would be required in an economic downturn. In setting fee rates, and in particular in determining the rates payable for the year starting 1 November 2017, the CLC reviews likely changes over the medium to longer term with the aim of smoothing variations in the regulatory fee rates so that CLC Practices can budget with reasonable certainty.</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 (Annex 4 of the application). This is largely the same information that was contained in the consultation paper, and consistent with the format provided in recent previous years. It includes:</p> <ul style="list-style-type: none"> • Description of the fee structure • Confirmation that licence fees remain unchanged from last year • Confirmation that practice fees have been reduced; Annex 3 provides examples of how practice fee contributions will change between the current 2017 and proposed 2018 rates • A summary of the strategy and business plan priorities • A summary of the budget and expenditure. <p>The information is issued to fee payers once the fee is approved by the LSB.</p>
<p>3. Permitted purposes</p>	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes - the CLC has solely regulatory functions.</p>

Is any other income to be applied to permitted purposes	Yes; the estimated budget assumes other income of £40,885. The source(s) of other income is not specified.									
4. Regulatory functions										
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	100%; the CLC has solely regulatory functions.									
Are any shared services clearly explained	Not applicable.									
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 	<p>Not included and no further information given.</p> <p>Yes. Regulatory objectives paragraph 23 and Better Regulation Principles paragraph 24.</p>									
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. The CLC does not regulate any non-commercial body. There was no specific consultation with non-commercial bodies that employ licensed conveyancers or probate practitioners on the basis that the proposed unchanged fee does not increase regulator costs for those employers.									
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>Four main issues were raised:</p> <p>1) It was noted that the size of the estimated Compensation Fund reserves for 2018 will be just over £7m compared to the minimum of £2m agreed by Council.</p> <p>The CLC provided a table which summarised the components and allocation of Compensation Fund reserves:</p> <table border="1" data-bbox="799 1599 1385 2033"> <thead> <tr> <th>Description</th> <th>Amount</th> <th>Commentary</th> </tr> </thead> <tbody> <tr> <td>Expected reserve at 31 Dec 2017</td> <td>£6.6m</td> <td></td> </tr> <tr> <td>Less:</td> <td></td> <td></td> </tr> </tbody> </table>	Description	Amount	Commentary	Expected reserve at 31 Dec 2017	£6.6m		Less:		
Description	Amount	Commentary								
Expected reserve at 31 Dec 2017	£6.6m									
Less:										

Minimum reserve level	£2.0m	
Confirmed probable claims	£2.0m	Payment expected in 12 to 24 months
Self-insurance reserve fund	£0,8m	Contribution based on premium saving since October 2014.
Restricted funds	£1.5m	Practice aged balances and aged intervention funds taken on since April 2016.
Surplus Reserves	£0.3m	

The CLC further clarified that not included in the table is a contingent liability totalling around £3.7m (based on the claimants estimates), which may not crystallise in full, if at all. Given the small surplus on the reserves and the uncertainty surrounding the contingent liability, the CLC believes it is prudent to continue to build reserves until the extent of the contingent liability (if any) is clear.

- 2) The minimum reserve for operations agreed by Council is £1m but is estimated at around £4m in 2018. We asked the CLC to clarify.

The CLC explained that the Practice Fund reserve at the end of December 2017 is expected to be £3.99m which is £3m in excess of our minimum reserve level. Reserves increased significantly during 2016, following the sale of the CLC's Chelmsford properties which realised £1.1m. The Council has not yet made a decision on how to apply these funds given the number of variables (including the OPBAS fee, CMA implementation costs and other infrastructure change).

- 3) The application referred to a Council decision in 2014 on the basis of a cost/benefit analysis not to renew the CLC's Compensation Fund Insurance policy, and instead to create a ring-fenced allocation which is held separately. The LSB wanted to know the size of the ring-fenced fund following cancellation of the insurance policy?

The CLS explained that the 'self-insurance' fund policy was implemented in October 2014. The Council took the decision to contribute an amount equivalent to the insurance premium payable at the point of the creation of the fund (£265k a year) until such time as the CLC has built up a fund equivalent to the insurance policy cover. The value of the contributions to this fund to date (£0.8m) has been included in the table above.

- 4) The LSB noted that there was no mention in the application of a contingency for the Office of Professional Body Supervision (OPBAS) levy and any Competition and Markets Authority (CMA) implementation related costs. We asked the CLC to provide any further information on these two aspects?

The CLC clarified that the contribution to OPBAS has not yet been determined so did not include it in its expenditure projection. It anticipates that the surplus projection would be sufficient to absorb this cost. Should the surplus be insufficient it would be funded through the use of reserves. The CLC's approach to any additional expenditure resulting from the CMA recommendations is similar. There is currently no certainty in relation to the timing and extent of costs the CLC is likely to incur. In addition these cost are seen as a one off or project costs, which the CLC would usually fund through the utilisation of reserves rather than from the current years practice contributions.

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Paul Greening, Regulatory Associate
31 August 2017