

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 is reduced from 1.1% to 1% of turnover (applying the current tiers as follows):

Turnover Banding		Practice Fee payable				
From	To	Minimum Fee in Band				
0 and	100,000	770	or	1.1%	Of Turnover	Whichever is the greater
		Minimum Fee in Band			On Turnover in excess of	
100,001	500,000	1,100	plus	1%	100,000	
500,001	3,000,000	5,100	plus	0.9%	500,000	
3,000,000		27,600	plus	0.8%	3,000,000	

The total projected funding requirement for 2019 is £2,757,139, compared to £2,702,254 forecast outturn for 2018. It is estimated that the Practice Fee will generate an income of £2,055,636. Taken with the Licence Fee and other income, there will be a total projected income for 2019 of £2,659,607. This will mean a shortfall of income against expenditure of £97,532. This would create a managed deficit, which would contribute to a small projected reduction in the CLC's reserves by December 2019.

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 2011.

Recommendation

We recommend that the CLC practising certificate fee for 2018/19 is approved under section 51 of the Legal Services Act.

The decision letter will note the need for improved consultation in advance of future applications and for greater explanation on the reserves for the CLC's compensation fund.

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. In relation to approval of the compensation fund contributions, through a separate Exemption Direction, the LSB noted that it would assist with future applications if additional explanation could be provided concerning the components and allocation of the reserves.
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 2019 has yet to be agreed. Based on the forecast of the outturn for 2018 and for the purposes of this application, it has produced a projection of operational expenditure for 2019 of £2,757,139. The 2018 forecast using actuals to June 2018 is £2,702,254. This is a variation of +2% (£54,885).</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>
<ul style="list-style-type: none"> Is there evidence that the immediate and medium terms needs have been taken into account 	<p>Yes. The CLC's process includes review and sign off of its annual report and accounts by external auditors.</p> <p>This year's application sets out the CLC's strategic objectives for 2018-22 and references its 2018 Business Plan.</p>

- Are the contingency fund arrangements clear

Yes. Set out in paragraph 26 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.

Reserves for the Compensation Fund stood at £6.68 million in December 2017 and are budgeted at the end of 2018 to be £7.16 million.

2016	2017	Dec 2018	Dec 2019
Actual	Actual	Forecast	Estimated
£ million	£ million	£ million	£ million
6.22	6.68	7.16	7.58

See paragraph 7 regarding the reserves.

Consultation

- 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

Yes. The CLC published a consultation on the current fee structure in May and which ended on 22 June 2018. The consultation was promoted in newsletters to the profession, on the website and in direct emails. The CLC received no responses to the consultation.

Yes, overall. The consultation was conducted without a proposal on the level of the PCF for the coming year. However, the consultation did make it clear that an increase in fees was not anticipated. In addition, the consultation included a proposal on the level of compensation fund contributions. Further, the consultation clearly set out the process and principles applicable in setting fee rates.

<ul style="list-style-type: none"> Has feedback been fully considered 	N/A.
<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 	<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; an annex 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.
<ul style="list-style-type: none"> When was/is this issued to fee payers 	The information is issued to fee payers once the fee is approved by the LSB.
3. Permitted purposes	
Is there evidence that the PCF income is used solely for permitted purposes	Yes - the CLC has solely regulatory functions.
Is any other income to be applied to permitted purposes	Yes. The estimated budget assumes other income of £51,971. 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 27 and Better Regulation Principles paragraph 28.</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 	<p>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.</p>
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>Yes. After raising concerns with CLC over the last two years about the size and growth of the Compensation Fund reserves, the LSB had expected the application to include additional information on the components and allocation of the Compensation Fund reserves.</p> <p>The CLC, responding to an LSB request, provided further information summarising the components and allocation of the Compensation Fund reserves. It outlined that Compensation Fund reserves consist of the minimum reserve agreed by its Council (£2 million), as mentioned in the application, plus components relating to contingent liabilities, an existing probable claims provision and ring-fenced funds that, due to their nature, cannot be distributed to claimants.</p> <p>The LSB raised additional questions to understand these Compensation Fund components. The CLC clarified that:</p> <ul style="list-style-type: none"> • the £2 million minimum reserve agreed by its Council is a safety net to protect against any unforeseen claims that could arise; and • the contingent liability relates to a single claim which is segregated because of its size, nature and current legal review. <p>The LSB also queried the estimates for the existing probable claims provision as previous years' estimates appeared to be higher than actual pay outs. The CLC responded by saying that:</p> <ul style="list-style-type: none"> • although these provisions have not been paid they are still payable; • the timing of payments can be impacted by third parties such as HM Revenue and Customs; and • provisions are reviewed monthly and adjusted if there are changes to specific cases.

Tim Borthwick, Regulatory Associate
30 August 2018