

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 2019 are as follows:

<b>Fee type:</b>	<b>Paid by:</b>	<b>2018</b>	<b>Proposed 2019</b>	<b>% Change</b>
PCF	CILEx Fellow	£364	<b>£364</b>	<b>No change</b>
PCF	Associate Prosecutor	£253	<b>£271</b>	<b>7% increase</b>
Practice Rights top up	CILEx Fellow with additional practice rights (per right)	£60	<b>£60</b>	<b>No change</b>
Practice Right top up	Other CILEx members with additional practice rights (per right)	£60	<b>£60</b>	<b>No change</b>
Advocacy rights	CILEx Fellows with additional rights of audience	£150 (at first renewal and then once every 3 years)	<b>£150 (every 3 years)</b>	<b>No change</b>
PCF	Non-member with practice rights	£450	<b>£450</b>	<b>No change</b>
Entity application/renewal	Entity	Variable as fee scale	<b>Variable</b>	<b>--</b>

The CILEx Group total income is £11,844,349 which includes income to be raised from PCF totalling £2,395,563 for 2019. Forecast PCF income for 2019 is 20.2% of total group income (2018: 21.6%).

In terms of entity fees, it is proposed that different fees will be charged to applicant ABS to reflect the additional requirements of this type of entity. The existing fee structure also includes an escrow option, but as this is not currently in use, it has been removed from the proposed fees. Fee bands have been reviewed to consolidate bands at the lower turnover levels and additional bands at higher turnover levels and therefore have proposed more proportionate fees for these new bands.

Of the 13 CILEx Reg entities, it is estimated that 3 firms will be better off as a result of the changes (as their turnover is likely to come out of the bottom band). The remaining 10 firms are likely to pay £60 more per annum than under the current fee structure.

**Recommendation**

- That the application be approved
- That the decision letter:

- Records that the LSB are pleased that the PCF remains at the same level as the previous year. This is with the exception of the PCF paid by Associate Prosecutors (AP)
- The PCF increase for AP 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. There is no change to PCF for other practitioners regulated by CILEx. In respect of the AP fee, which is increasing by 7% in 2019, record that we are aware this is paid by the Crown Prosecution Service (CPS) and not APs themselves. The 7% increase in PCF for Associate Prosecutors represents the final instalment of the phased increase in fees.
- Welcomes that CILEx has consulted relevant regulated communities as noted in last year's assessment and decision letter

## Part Two: Assessment of the application against LSB acceptance criteria

<b>1. Pre-submission</b>	
Were there any pre-submission discussions or a draft application; were any issues identified?	<b>No</b>
Were there any areas for improvement or specific issues in the last approval letter?	<p>In the approval letter for the 2017 application (for 2018 PCF) we:</p> <ul style="list-style-type: none"> <li>○ Encouraged CILEx Reg to consult with members and fee payers (although not obligatory) because the lack of consultation assumes that PCF contributors are happy to pay the same fees as the previous year, when in fact they may have views that the PCF should be reduced</li> <li>○ Recognised that CILEx/CILEx Regulation is in a transitional period following the designation for new reserved legal activities and the commencement of entity regulation; acknowledged that building data on the true cost of these new activities would take time, but said we would be likely to look for more information/detail on this in next year's PCF application</li> </ul>
<b>2. Developing the application and budget</b>	
Is it clear that the regulatory arm has led the development of the application?	<b>Yes.</b> The application has been submitted jointly by CILEx and CILEx Regulation.

	<p>CILEx Regulation Board determined the regulatory costs for the 2019 budget at its February 2018 meeting. CILEx's Finance Committee considered proposals for 2018 fees at its May 2018 meeting.</p>
<p><i>Budget</i></p> <ul style="list-style-type: none"> <li>• Is it clear how the budget has been arrived at?</li>   <li>• Is there evidence that the immediate and medium terms needs have been taken into account?</li>   <li>• 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?</li>   <li>• Are the contingency fund arrangements clear?</li> </ul>	<p><b>Yes.</b> This is explained in the section of the application <i>Budget setting, forecasting and financial oversight</i></p> <p><b>Yes.</b> The application states that the CILEx Regulation Board continues to set its budget independently against its strategy and annual business plan. The strategic aims and key activities for CILEx Regulation was set for 2016-2019 and thus was re-visited in the first quarter of 2017 to produce the 2018-2019 strategy. This strategy was considered in order to identify the resource needs of CILEx Regulation for 2019. Provision for OPBAS and CMA expenditure have been incorporated in to the CILEx budget for 2019, as the figures have not yet been finalised through OPBAS and this enables more certainty through the CILEx Regulation budget for 2019.</p> <p>The proposal is not to increase PCF. This is with the exception of the PCF paid by Associate Prosecutors (AP), which is increasing by 7% (lower % increase to last year (15% increase). During the assessment, CILEx Regulation confirmed that it was unclear from the entity fee table in the application what the overall fee impact would be for CILEx Reg entities. Following further information on this from CILEx Reg, it became clearer that there will be a fee increase for most entities. Only 10 of 13 entities are required to pay the increase, therefore the LSB considers that it would be disproportionate to ask CILEx Regulation to produce a 3 year budget in this particular case.</p> <p><b>Yes.</b> CILEx reserves stand at £8.7m (3.6 times the level of PCF income in the 2019 budget). CILEx Regulation had a small surplus at the end of 2017, which has resulted in reserves of £53,681 carried forward to 2018. The CILEx Reserves Policy provides that it should hold at</p>

	<p>least 12 months' budgeted PCF and membership income in reserve.</p> <p>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.</p> <p>Although the £8.7m 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 governance restructure. Any changes will not impact on CILEx Regulation's position regarding access to reasonable resources.</p>
<p><i>Consultation</i></p> <ul style="list-style-type: none"> <li>• Has the proposed fee been consulted on? If so, summarise.</li> <li>• Was the consultation clear about the level of fee and how it will be collected?</li> <li>• Has feedback been fully considered?</li> </ul>	<p><b>Yes.</b> All fees were consulted upon with the relevant regulated community between 21 May 2018 to 20 June 2018 and following analysis of the consultation responses, final proposals for the 2019 PCF were agreed by the CILEx Regulation Board at its July 2018 meeting and considered by the CILEx Finance Committee at its August 2018 meeting. Consultation has also been carried out with the CPS.</p> <p>The consultations were clear about the fees and feedback has been considered.</p> <p>A summary of the responses is included in the Annex of the application.</p>
<p><i>Clear and transparent</i></p> <ul style="list-style-type: none"> <li>• Is the information provided to fee payers on the level of fee clear and transparent?</li> <li>• When was/is this issued to fee payers?</li> </ul>	<p>The proposed fees were shared as part of the consultations. Fee payers will be informed of the finalised fees following LSB approval.</p>
<p><b>3. Permitted purposes</b></p>	
<ul style="list-style-type: none"> <li>• Is there evidence that the PCF income is used solely for permitted purposes?</li> <li>• Is any other income to be applied to permitted purposes?</li> </ul>	<p><b>Yes.</b> The total budget for all permitted purposes is set out in Appendix 1. It is equal to the expected PCF income of £2,395,563. An additional £375,130 of income is intended to go towards regulatory activities. This is labelled as "Other" under the income section of the draft 2018 budget.</p>

<b>4. Regulatory functions</b>	
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions?	<b>Yes.</b> The CILEx Regulation Direct expenditure is separately identified in the draft budgets (total £1,812,110 – inclusive of LSB/OLC levies of £130,000).
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.  The 2019 budget includes a line for Central Resources & Admin (covering HR, finance and accounting, procurement and facilities) of £1,943,075 in total, of which £320,524 is allocated to permitted purposes (i.e. regulatory activities and other permitted purposes).
<b>5. Regulatory and equality impact assessment (optional requirement)</b>	
<ul style="list-style-type: none"> <li>Completed and included?</li> <li>If not included, is there an explanation of the potential impact?</li> <li>Does the application contain commentary on the regulatory objectives and the Better Regulation Principles</li> </ul>	<p>A specific regulatory and equality impact assessment was not included with the application.</p> <p><b>Yes.</b> The application contains commentary against the Regulatory Objectives and the Better Regulation Principles and concludes that the process for determining the PCF has been targeted solely at the regulatory and permitted purposes (e.g. authorisation and supervision). The application says a proportionate approach has been taken in line with the CILEx Group original three-year budget plans (2017-2019).</p>
<b>6. Consultation with non-commercial bodies (optional requirement)</b>	
<ul style="list-style-type: none"> <li>Does the application include a description of the steps taken?</li> <li>Have the proposed fees been shared with such bodies?</li> <li>What was the response?</li> </ul>	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 that branch of the profession to warrant consultation with charities.
<b>7. LSB Review</b>	
Have we consulted with any other body on the application?	Not considered necessary for this application.
Were any issues raised in the assessment?	The application did not include information on the overall impact of the proposed entity fees. It was therefore not possible to understand how many regulated firms would pay more in fees for 2019 compared to 2018. CILEx Regulation confirmed that only 10 of 13 entities

	<p>are required to pay the increase, the LSB therefore considers that it would be disproportionate to ask CILEx Regulation to produce a 3 year budget in this particular case.</p> <p>We requested further information from CILEx Regulation on the changes to compensation fund contributions and the impact. 7 firms will be contributing more (2 at £195pa and 4 at £91pa). The new contributions will result in an additional £124 for the overall Compensation Fund (compared to 2018).</p> <p>We queried the presentation of the Operations figures stated in the permitted purposes section of the assessment as they varied considerably since last year's application. CILEx Regulation since confirmed that this year's figures were correct and that an inadvertent error had been made with last year's figures (the assessment of the amount of time and cost spent on permitted purposes activities and providing services to CILEx Regulation under service level agreements looks at different aspects of the various activities that are carried out, and what was inadvertently included in last year's table was just part one, rather than the final overall percentages).</p>
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**21 September 2018**