

Practising Certificate Fee (s51) application assessment

Approved regulator: ACCA

PCF year: PCF level to cover period 1 April 2018 to 31 December 2019

Part One – Summary and recommendation

Summary

Following LSB approval of the ACCA's Regulatory Arrangements on 17 January 2018, the ACCA intends to commence authorisation and regulation of firms undertaking probate activities.

The ACCA proposes to introduce annual PCFs for firms wishing to hold a Legal Activities Certificate (LAC). The LAC will authorise firms to undertake probate activities, effective for the remainder of the calendar year in which the firm is authorised. **The application is in respect of the fee level for both 2018 and 2019.**

The proposed fee for a firm's probate activity will be £250 per authorised person (ACCA and non-ACCA members) in that firm.

The full LAC fee will be charged for 2018, as the ACCA does not apportion fees for applications made during the course of the year. From October each year, individuals and firms applying for legal activities authorisation will be authorised to 31 December of the following year, and will be required to pay the following year's legal activities authorisation fee.

It forecast a total income from fees of £50k for 2018 and £62.5k for 2019 against total costs of £46.2k and £66.3k respectively in 2018 and 2019. The ACCA has also identified and quantified implementation costs of £34,190, which the ACCA anticipates recovering over a 5-year period.

Recommendation

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

- Notes that the budgeted expenditure in the application did not include any element of central overheads (for example, office, utility and IT costs) or time spent by the Executive Directors on legal activities regulation. If in the future, the ACCA wants to include a proportion of the costs of such central overheads/shared services in its budget to be recovered by the PCF, it would be helpful it were able to devise a transparent and consistent way of allocating such central costs between its legal regulatory activities and other activities, and to share that apportionment methodology in its PCF application.
- With regards to the methodology for the calculation of firm fees based on number of approved persons in the firm, the letter notes LSB considers this a proportionate means of calculation at this time. However, we expect the ACCA to keep under review the appropriateness of this methodology as its regulated community grows.
- The ACCA's current arrangement on consulting on fees is that it will only consult on future increases if this is more than 5%. The letter points out this is at odds with LSB guidance and expectation that approved regulators should consult if there is any level of increase.

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>Yes. Not a draft application, but the principle of LSB approval of the ACCA probate activity fees under s51 was confirmed in the LSB decision in respect of the ACCA application to introduce regulatory arrangements for probate activities, which the LSB approved on 17 January 2018.</p> <p>The LSB decision notice specified that <i>“The practising fees that the ACCA will charge also have yet to be set. This will occur outside of this [rule change approval] application process through a PCF application to the Board, but the fees must be approved before authorisation begins.”</i></p>
Were there any areas for improvement or specific issues in the last approval letter	Not applicable. This is the ACCA’s first PCF application.
2. Developing the application and budget	
Is it clear that the regulatory arm has led the development of the application?	<p>Yes. To the extent that it has been engaged proportionately, given the role and responsibility of the ACCA’s Regulatory Board.</p> <p>The ACCA’s arrangements are that its Regulatory Board is the body that oversees ACCA’s legal regulatory functions. The top of the ACCA’s governance structure is the Council, which determines ACCA’s overall objectives, strategy and budget. The Executive Team is the most senior decision-making team in ACCA’s management structure and has overall responsibility for the delivery of ACCA’s strategy and plans on behalf of the Council.</p> <p>Following further information requested from the ACCA, it confirmed that The Regulatory Board was not involved in drafting ACCA’s application to introduce legal activities authorisation fees, as it does not involve itself in operational matters. However, in overseeing ACCA’s regulatory arrangements, the ACCA’s Regulatory Board must satisfy itself that ACCA has the resources available to conduct its regulatory activities effectively. This is considered each year as part of ACCA’s regulatory plan, and also considered regularly, as the Regulatory Board reviews the regulatory dataset. The ACCA considers that the impartiality of the Regulatory Board would be threatened if the Board were to become</p>

3. Permitted purposes	
Is there evidence that the PCF income is used solely for permitted purposes	Yes. The ACCA confirmed in its application that it has no intention to use income from PCF for non-permitted activity.
Is any other income to be applied to permitted purposes	Yes. The ACCA has said that income from other sources may be used for permitted purposes. In charging the rate proposed, it does not anticipate the need for a budget subsidy for legal activities from, for example, the ACCA's membership subscriptions, general practising certificate fees, or examination entry fees.
4. Regulatory functions	
Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions	Yes. The ACCA application is clear that 100% of PCF income will go to regulatory functions.
Are any shared services clearly explained	Yes. The application confirms that the ACCA's regulatory arrangements for legal activities will also be supported by 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 	<p>No. The application states that the ACCA has sought to set the PCF at a rate that is proportionate, competitive and fair.</p> <p>The application also states that the level has been calculated with due regard to the regulatory objectives and consistency with the Better Regulatory Principles but has not provided detail.</p> <p>In the context of this application, whereby the ACCA will be regulating a small number of probate practitioners for the first time, and that this is an optional requirement, the LSB is content with the information provided.</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 ACCA is unlikely to be servicing non-commercial bodies.
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?

Yes. Three key issues were raised:

- 1) The LSB noted that the budgeted expenditure in the application did not include any element of central overheads (for example, office, utility and IT costs) or time spent by the Executive Directors on legal activities regulation. The LSB has an expectation that approved regulators have a transparent and consistent way of allocating such central costs between its legal regulatory activities and other activities, and to share that apportionment methodology in its PCF application.
- 2) Methodology for the calculation of firm fees. This is based on number of approved persons in the firm. The LSB considers this a proportionate means of calculation given the probable low number of firms. However, we expect the ACCA to keep under review the appropriateness of this methodology.
- 3) The ACCA's current arrangement on consulting on fees is that it will only consult on future increases if this is more than 5%. This is at odds with LSB guidance and expectation that approved regulators should consult if there is any level of increase.

All three issues have been addressed in the LSB's decision letter.

Paul Greening
Regulatory Associate
5 March 2018