

## Practising Certificate Fee (s51) application assessment

### Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards (IPS)

#### Part One: summary and recommendation

##### Summary

The CILEx Group total budget is £8,439,484 which includes income to be raised from PCF totalling £2,326,387 for 2014 (or 28% of CILEx's total group income). All of the PCF income has been attributed to regulatory permitted purposes activities, in line with the LSB's PCF Rules.

The total budget for IPS direct expenditure on regulatory activities totalled £997,243 (2013: £1,025,676) in 2014 this equates to 43% of the total PCF income. The remaining 57% of PCF income has been attributed to the remaining regulatory permitted purposes expenses (which includes the LSB levy fees) incurred by CILEx; this is also in line with our PCF rules which allow the representative arm to use PCF income for one or more of the permitted purposes set out in the LSA 2007.

The proposed fee level for 2014 for an **Authorised Person (Fellow)** is **£299**; this represents a £9 or a +3.1% increase from the fee levels for 2013. The proposed fee for an **Associate Prosecutor** is **£150**; this remains unchanged from the 2013 fee level. Fee paying members do not contribute to a compensation fund.

The fees budgeted for 2014 will help contribute towards delivering a balanced budget, at present the CILEx Group expenditure on permitted purposes exceed the income from PCF but the shortfall will be subsidised by other CILEx Group income.

##### Recommendation

- That the application be approved.
- That the approval letter comments on the following points:
  - CILEx/IPS to provide the LSB with this previous year budget information at the time of submitting next year's PCF application.
  - IPS to provide an assurance that the actual fee is sufficient to cover the necessary regulatory activity for Associate Prosecutors when the fee levels are reviewed for 2015.
  - CILEx/ IPS may wish to consider ways to increase the response rate to their consultation, by introducing a longer consultation period and at a time where Fellows are likely to be able to respond.

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

Pre-submission	
Were there any pre-submission discussions or a draft application; were any issues identified	No meeting or draft application.
Were there any areas for improvement or specific issues in the last approval letter	Yes, we indicated that the 2013 application should include: <ol style="list-style-type: none"> <li>1. the current and budget year figures;</li> </ol> <p>On 20 August, CILEx provided the LSB with a comparison table of current year and budget year figures (which was</p>

	<p>provided as additional information last year). This will be published on our website alongside the original submission.</p> <p>2. a description of reserves;</p> <p>The CILEx reserves policy prescribes that it should hold the equivalent of a minimum of 12 months budgeted membership income in reserve. The application notes that IPS do not hold any reserves itself but CILEx’s reserves policy currently stands at £8.5M – nearly four times the level of PCF income in the 2014 budget. However, only £2.5M is actually cash reserves and £6.5M is made up of investments.</p> <p>3. an explanation that the practising fee income does not cover the full cost of regulation;</p> <p>The communications letter to members accompanying the application gives a breakdown of how the practising fee income is spent including subsidies from other CILEx Group income.</p>
<b>Developing the application and budget</b>	
<p>Is it clear that the regulatory arm has lead the development of the application?</p>	<p>Yes, see explanation below.</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>• Are the contingency fund arrangements clear</li> </ul>	<p>The application shows clear independence from CILEx as the representative body when setting the IPS budget.</p> <p>The budget is prepared by the CEO of IPS and determined in light of the following factors:</p> <ul style="list-style-type: none"> <li>• expected maintenance of regulatory work</li> <li>• projects to be undertaken during the year</li> <li>• implementation and development activity to be undertaken in respect of existing projects</li> </ul> <p>The contingency fund/reserves arrangements are not explained in the above sections.</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>Yes, a consultation process was conducted from 22 May 2013 to 7 June 2013 and all Fellows were sent a letter (either electronically or hard copy), explaining the fee level options and how the income for fees will be spent. This level of involvement is a step further than some other ARs who simply publish the consultation paper</p>

	<p>on their website.</p> <p>Out of a total of 7,056 of practicing Fellows, a total of 182 responses (2.58% of all Fellows) were received; the majority of responses (82) agreed with the small increase in fees. The consultation process was held within a very short timeframe which may have contributed to the low response rate and we have flagged this as an area for improvement in the approval letter.</p> <p>No direct consultation with individual Associate Prosecutors (<b>APs</b>) as the Crown Prosecution Service (<b>CPS</b>) pays their PCF. IPS/CILEx did however consult with the CPS regarding possible increases to the Associate Prosecutors' fees; CPS responded that it wished the fee to remain at £150 for 2014 but acknowledged that as IPS had not committed to a fee increase in 2013, they accepted that a detailed discussion would take place for the 2015 fees.</p> <p>IPS have also confirmed that the fees collected for APs are expected to cover the cost of regulating that group of individuals as next year the regulatory activity for this group of individuals will focus on monitoring and there will not be any authorisation or moderation of new training courses which would be an additional cost area. This is because the CPS is not intending to carry out any new recruitment for new APs in 2014.</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>Yes, the letter sent to members during the consultation period set out the fee levels and included a diagram of how the practising fee income will be spent.</p> <p>A final copy of the fee levels will be sent to members at the point of renewal.</p>
<b>Permitted purposes</b>	
Is there evidence that the PCF income is used solely for permitted purposes	Yes, all the PCF income has been attributed to permitted purposes activities.
Is any other income to be applied to permitted purposes	Yes, CILEx identified that £4,980,000 was the required budget to cover total permitted purposes expenditure for 2014, therefore income from PCF of £2,326,387 provides only 46.7% of the total required. The rest will be covered by CILEx's other income sources to fund the full cost of permitted purposes activities.
<b>Regulatory functions</b>	
Is there evidence of how much of the PCF	Yes, IPS identified that the total spend on

income is applied to permitted purposes that are regulatory functions	<u>regulatory</u> permitted purposes expenses will be £2,380,500. The PCF income of £2,326,387 will be just short of covering these expenses so the shortfall will be met by CILEx's other non-PCF income.
Are any shared services clearly explained	On 20 August, CILEx provided the LSB with a comparison table of current year and budget year figures which included a description of shared services.
<b>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 objective and the Better Regulation Principles</li> </ul>	<p>No, an impact assessment has not been included in the application. IPS note that members from local government cited difficult financial circumstances under which their local authority employers are operating (due to the lack of pay rises). Some indicated that their employer did not pay their PCF.</p> <p>Yes, the application indicates that the setting of fee levels has been a considered approach in line with the RO and BRP and in particular transparency through the consultation on the fee levels with fee paying members.</p>
<b>Consultation with non-commercial bodies</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>	No consultation with non-commercial bodies or the Consumer Panel, but the consultation included CILEx members who work in non-commercial bodies.
<b>LSB Review</b>	
Have we consulted with any other body on the application	No, this was not required.
Were any issues raised by LSB colleagues from the first review	<p>Yes, the following issues were flagged to IPS for a response:</p> <ul style="list-style-type: none"> <li>We requested that IPS provide us with a table of the previous year's budget figures for comparison and a description of shared services.</li> </ul> <p><i>Received on 20 August, published on the website 21 August.</i></p> <ul style="list-style-type: none"> <li>We queried some figures in Table 3 CILEx Group Draft 2013 [sic 2014] i.e. the source of the £171,000 of other income from regulatory activities, and what happens to the £116,924 of budgeted surplus as the application states that PCF income will not go towards increasing the Group reserves.</li> </ul>

*IPS indicated that the £171K was made up of income from member's applications for Fellowship (£161K) and cost orders and fines from disciplinary proceedings (£10K). The £161 surplus will go towards regulatory permitted purposes, to cover the overall deficit for permitted purposes activities of £1.7M.*

- Can CILEx deliver the regulation of Associate Prosecutors within the current fee levels? This is related to the decision taken by CILEx to keep the Associate Prosecutor fee levels at £150 for 2014, which remains unchanged from last year.

*On 21 August, IPS confirmed that the fees collected for Associate Prosecutors are expected to cover the cost of regulating that group of individuals.*

Two additional points were raised by colleagues, which did not require further information from IPS/CILEx and were not included in the approval letter.

- Independence

IPS/CILEx's consultation offered three fee level options to Fellows/CPS and, on the face of it looks like IPS settled for the option most palatable to the fee payers. Questions were raised on whether this creates the risk that IPS' independence from the professional may be, or seen to be compromised?

We determined that the key point to determine here is whether the budget itself has been set independently from the profession, and whether the monies to be raised will satisfy the regulatory requirements. As long as the professional body is not determining how the monies it provides is being spent, the independence criteria will be met.

It is our view that the independence criteria have been met. IPS has confirmed in a letter accompanying the application (signed by Ian

	<p>and Diane) that IPS sets its budget independently. IPS has its own strategy and business plan which are reviewed in January each year. The last review determined strategic aims for 2013-18 and key activities to be met by 2015 and resource needs for 2014. CILEx also confirmed that requests for additional resources will be met; IPS has no concerns about securing such resources.</p> <ul style="list-style-type: none"> <li>• PCF income/other income</li> </ul> <p>In relation to the consultation which gave options on the level of the practising fee, it appears that anything less than the highest fee option offered to members in the consultation will not meet the regulatory budget requirement; this throws up the question of if, in principle, the LSB should be approving such fees.</p> <p>Another related issue to this point is whether or not surpluses should be used to keep PCF levels at a lower rate (the approach adopted by IPS/CILEx for the last two years), and also if surplus from income sources such as training, in fact indicate that trading activities are over-priced and act as a barrier to entry.</p> <p>As our PCF Rules and the LSA 2007 allow regulatory and other permitted purposes activity to be funded by 'other income' which may come from trading activities conducted by the AR, such as training, we have no problem with IPS/CILEx setting the fee at a lower level and subsidising regulation through other income.</p> <p>We are not in a position to comment on training being fairly priced, this issue is outside the remit of LSB's powers in terms of granting PCF applications.</p>
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