

alcd

Application to LSB under
section 51 Legal Services Act,
2007 for the 2011 practising
certificate fee

- Application
- Consultation paper and
appendices

4 October 2010

Application to the Legal Services Board for approval of ALCD's 2011 practising certificate fee(PCF)

1 Introduction

- 1.1 The Association of Law Costs Draftsmen (ALCD) was founded in 1977 with the object of promoting the status and interests of the profession of Law Costs Draftsmen and ensuring maintenance of the highest professional standards within its membership.
- 1.2 The ALCD regulates those of its members who have the right to conduct costs litigation and rights of audience in costs proceedings, pursuant to Sections 27 and 28 of the Courts and Legal Services Act, 1990. The authority to grant these rights to those regulated by the ALCD was vested in the ALCD by The Association of Law Costs Draftsmen Order, 2006 (SI No 3333 of 2006) (the Statutory Instrument) with effect from 1 January 2007.
- 1.3 In 2010 ALCD established Costs Lawyer Standards Board Limited (CLSB) to enable ALCD to separate its representational role from its regulatory role in accordance with the Legal Services Act, 2007(LSA).
- 1.4 ALCD remains the Approved Regulator under section 20(2) of the LSA, Part 1 of Schedule 4 to the LSA and the Statutory Instrument. As such the duties imposed upon an Approved Regulator as set out in sections 20 and 21 LSA are imposed upon ALCD. Those duties are delegated to CLSB in order to achieve the necessary degree of separation required by the LSA. The relationship between the ALCD and CLSB is to be governed by a Protocol to ensure that in cases of difference between the bodies recourse may be had to the Legal Services Board (LSB) for the resolution of such differences at any time, subject to a mediation provision.
- 1.5 Section 176(1) of the LSA obliges an Authorised Person to comply with the regulatory arrangements of the Approved Regulator.
- 1.6 The application is made on the basis of regulation 24 of the ALCD's bye-laws. In due course this regulation will be modernised. Regulation 24 provides:
- "An annual subscription fee, in such sum as may from time to time be determined by the Council, shall be payable by all Members. A subscription fee shall be paid on admission to membership and thereafter on the first day of January each year."***
- 1.7 Following modernisation of the bye-laws there will be up to 500 members of the ALCD regulated by CLSB on behalf of the ALCD.

2 Consultation

- 2.1 In early October 2010 the attached consultation document is being sent to ALCD's members, Approved Regulators (ARs) and others to seek comments and constructive opinion about the

level at which the practising certificate fee (PCF) is set for the practising year commencing 1 January 2011 and terminating 31 December 2011.

- 2.2 For the purpose of the 2011 PCF the number of authorised persons liable to pay the PCF is assumed to be 350.

3 Development of budget

- 3.1 In developing the budget ALCD has borne in mind the statutory framework for achieving good regulation of the profession.

- 3.2 The regulatory objectives which the LSA requires ALCD to achieve are set out in section 1 of the LSA:

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

- 3.3 The professional principles which CLSB is required to promote are also set out in section 1 of the LSA:

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential.

- 3.4 The 2011 PCF is intended to provide adequate funding to enable the regulatory body to provide a regime which has the following characteristics:

- a) Proportionate;
- b) Accountable;
- c) Consistent;
- d) Transparent; and,

e) Targeted¹.

CLSB will undertake its role in adherence to the Five Principles of Good Regulation set out above. The role and activities of CLSB will be developed further in the ALCD consultation paper on Internal Governance. For the purpose of this application it is only necessary to make clear that in addition to providing a regulatory regime which ensures both regulatory and professional objectives are achieved it is intended that CLSB will undertake work with the regulated community to pro-actively assess the extent of authorised persons' compliance with the regulatory arrangements. An education programme will be developed to support Authorised Persons in developing their compliance systems.

- 3.5 Authorised Persons practice in a wide variety of different formats. A large number practice from home as sole practitioners whilst others spend their working lives as in house costs lawyers either for large firms of solicitors or institutions. Yet others practice in multi-office firms which have costs lawyers working for them in a traditional office context.
- 3.6 The professional conduct of costs draftsmen does not give rise to many service complaints or conduct breaches. Since 2001 there have been only 11 service complaints and 17 conduct issues. This is partly a reflection of the relatively small numbers of Authorised Persons, there are unlikely to be more than 500 to be regulated initially, but also of the work ethic and high standards adopted by almost all costs draftsmen.
- 3.7 At this stage it is not intended to seek to regulate entities nor to seek a licence to regulate Alternative Business Structures. Both options may be pursued by ALCD/CLSB in the future but for the present the profession is keen to achieve full compliance within the terms of the LSA and, as part of that process, to provide a modern and transparent approach to the setting of the PCF. This choice has an effect on budget.
- 3.8 The process of budget setting has therefore taken the characteristics of the profession into account with a fee and its associated regulation intended to provide a regime which is in proportion to the level of regulatory infraction experienced over the past 9 years being kept firmly in view.
- 3.9 In the light of responses to the consultation process it may be thought appropriate to amend this approach to reflect consultees' views. The draft attached to this paper does however represent a relevant starting point for a discussion about the appropriate PCF to facilitate regulation of a professional body of, initially, no more than 500 individuals.
- 3.10 The Board is referred to the attached consultation paper which has attached to it relevant materials which were taken into account when setting the budget for the 2011 practising year:

¹ The Better Regulation Commission

- a) ALCD's accounts for the year to 31 December 2008; and,
- b) ALCD'S internal profit and loss accounts for ALCD and ALCD Training for the year to 31 December 2009;

- 3.11 The consultation also has attached to it the budget for 2011 which has been determined taking into account the size of the regulated community, the anticipated activities of CLSB and the historic data for both finance and level of regulatory activity associated with the profession.
- 3.12 This is the first occasion ALCD has been required to formulate a specific request for approval of a PCF. As such historical data is not available to support an easy analysis of expenditure by reference to Permitted Purposes or non-Permitted Purposes or by department. ALCD is run by a Council of volunteers drawn from the ranks of the profession who are typically committed full-time to their professional practices. Administrative support is provided by one part-time Administrator. The Board is asked to adopt a proportionate approach to its expectations of the AR for the 2011 PCF approval.
- 3.13 However, by the time of the 2012 PCF approval application a full time staff will have been appointed to CLSB (a CEO is already in place) and record-keeping will be of a different order enabling CLSB/ALCD to furnish the Board with much more detailed data as to budget setting, historic data and allocation to Permitted Purposes/regulatory functions.
- 3.14 A contingency has been provided within the budget for CLSB of approximately £25,000. However, ALCD is committed to establishing CLSB as an independent regulatory body and will provide sufficient funds from ALCD reserves to meet any further contingency requirements above the existing contingency provision.
- 3.15 For the reasons given in paragraph 3.12, above, it is difficult for ALCD to provide data on variations from past years and an analysis of exceptional regulatory activity. During 2011 it is not anticipated that regulatory activity will increase significantly beyond the levels experienced in the previous 9 years (see paragraph 3.6, above). However, in successive years an increase in regulatory activity is anticipated as the pro-active monitoring regime begins to take effect. The associated additional costs will be included within future budgets.

4 Breakdown by regulated person

- 4.1 As at April 2009 there were 246 Authorised Persons. However, as a result of the changes to the categories of members it is anticipated that following this year's PC renewal there will be between 350 and 500 Authorised Persons.
- 4.2 Because of this lack of certainty of numbers it is not possible to determine a precise breakdown of costs per Authorised Person for the 2011 PCF approval.

5 Information for members

- 5.1 The consultation paper has attached to it a set of explanatory notes in the style of the Council Tax leaflet to which the Board suggested was a good model of the kind of explanations it was expecting ARs to provide to their members.
- 5.2 The accompanying terms and conditions and fee note will change during 2011 as the regulations affecting the profession are modernised. In due course these new regulations will, of course, be the subject of applications for rule approval to the LSB.
- 5.3 CLSB's web site is not yet operational. It is expected to be operational before the end of 2010. Accordingly in future the PCF application and accompanying documents with information for members will be posted there.

6 Diversity impact assessment

- 6.1 The Board's decision not to require a full Equality Impact Assessment for the 2011 approval is appreciated.
- 6.2 The budget nevertheless takes into account issues relating to equality and diversity. In this respect the Council of ALCD has deliberately chosen not to set the PCF for 2011 at a level higher than the PCF for 2010 to ensure that those paying do not experience a fee which deters any member from applying.

7 Contact

Any request for clarification concerning this application should be addressed to:

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