

Introduction of legal activities authorisation fees

Under section 51 the Legal Services Act 2007

Application by ACCA

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1. EXECUTIVE SUMMARY

Statement of application

- 1.1 ACCA is an approved regulator (**AR**) in respect of probate activities under the Legal Services Act 2007 (**the Act**) and its regulatory arrangements for probate activities were approved by the Legal Services Board (**LSB**) on 18 January 2018 under Part 3 of Schedule 4 to the Act.
- 1.2 ACCA hereby applies for approval to introduce Practising Certificate Fees (**PCFs**) for legal activities. Our application is made in accordance with section 51 of the Act, which enables the LSB to approve PCF levels in accordance with the LSB's Practising Certificate Rules 2016 (**the Rules**).

Legal activities authorisation fees

- 1.3 ACCA proposes to introduce annual PCFs for firms wishing to hold a Legal Activities Certificate (**LAC**). The LAC will authorise the firm to undertake probate activities, effective for the remainder of the calendar year in which the firm is authorised. Our application is in respect of the PCFs for the calendar years 2018 and 2019 (as set out in paragraph 2.4).

2. DEVELOPING THE APPLICATION AND SETTING THE BUDGET

Fees basis

- 2.1 ACCA members pay a fee on admission to membership and an annual subscription, regardless of whether they hold an ACCA practising certificate (**PC**). The subscription for a calendar year is set annually, and any increase in excess of 5% requires the members' approval in general meeting (in accordance with the by-laws). Separate fees are levied for PCs and for certificates and other authorisations for specific regulated activities (eg audit, insolvency and certain investment business activities).
- 2.2 An authorised individual will not be permitted to provide probate services unless his or her firm holds an LAC. Therefore, PCFs will not be charged to authorised individuals directly. Instead, firms awarded an LAC will be required to pay a fee based on the number of authorised individuals (ACCA members and non ACCA members) responsible for probate work within the firm. The legal activities authorisation fee will be determined by ACCA, in accordance with the Rules. The fee will be first payable when the firm applies to ACCA for an LAC, and will then be payable annually on renewal of the authorisation.

Legal activities authorisation fee levels

- 2.3 ACCA is proposing to introduce PCFs for the first time in 2018, following the approval of its application to introduce regulatory arrangements for probate activities.
- 2.4 The proposed fee for a firm's LAC to cover probate work, issued in 2018, is £250 per authorised individual (ACCA members and non ACCA members).
- 2.5 We propose to keep the 2019 fee at the same level. There are no comparative fee levels for prior years.

- 2.6 The full legal activities authorisation fee will be charged in 2018, as ACCA does not apportion fees for applications made during the course of the year. However, 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.
- 2.7 The proposed fee has been determined through collaboration at senior levels within ACCA, which has achieved the necessary assurances from those who lead ACCA's regulatory functions that the proposed fee is reasonable and fair.
- 2.8 Any future changes in the legal activities authorisation fee will be determined by ACCA, in accordance with the Rules, and will be largely dependent on the number of authorised persons within ACCA firms, and the costs of regulation in respect of reserved legal activities.

Setting the budget

- 2.9 ACCA's qualifications, ethical standards, licensing procedures, monitoring, investigation and disciplinary processes are key to reassuring the public and regulators of the high standards expected of ACCA members. ACCA's financial commitment to the costs of regulation is a measure of the seriousness with which it approaches its responsibilities. Due to its financial strength, ACCA is able to implement necessary regulatory and disciplinary procedures, and to respond to changing demands, while paying due regard to the regulatory principle of proportionality.
- 2.10 Recognising that the robustness of its regulatory procedures enhances the reputation of accountants and elevates the ACCA brand, ACCA aims to balance its costs and revenues across the organisation. Therefore, the costs of regulation have always exceeded regulatory income (in the form of fees for authorisations, and fines and costs ordered). Further details of how our financial resources are deployed in the various areas of regulation (by activity) can be found in ACCA's Regulatory plan 2017/18 (which formed part of our application to introduce approved regulator regulatory arrangements for probate activities).
- 2.11 Subject to the above, ACCA has adopted a self-financing approach to legal activities regulation. The legal activities authorisation fee is to be set at a level where income from authorisation fees covers the estimated costs of ACCA's regulatory activities (insofar as these can be separately identified and reasonably estimated). We plan to recover implementation costs over a five year period. Within this model, we have not sought to identify all implementation costs incurred since it was decided that ACCA should seek to become an AR for probate services. Neither are we seeking to identify and recover a proportion of central overheads, or any costs relating to the oversight of ACCA's Executive Team and its Regulatory Board.
- 2.12 The budget for probate has been developed alongside ACCA's existing strategic and financial plans and takes account of immediate and medium term needs, insofar as these are known. Our estimate of costs is modest and acknowledges the challenges of forecasting the demand for legal activities authorisation as well as the resources needed to deliver the various regulatory functions.

Contingency and reserves

- 2.13 ACCA is satisfied that it has sufficient financial resources to meet its core regulatory functions and is financially capable of fulfilling the requirements for regulating probate activities. Needless to say ACCA, as with other regulators, faces budgetary constraints and choices when allocating its resources. We continue to invest in a range of initiatives that will deliver sustainable growth, and have sufficient reserves to ensure that unexpected expenditure can be met. Further information concerning ACCA's financial resources is contained in our integrated report and consolidated financial statements for 2017 which are available on ACCA's website at <http://www.accaglobal.com/uk/en/about-us/annual-reports.html>
- 2.14 ACCA has robust financial planning and review procedures. ACCA's Council is responsible for monitoring the organisation's performance in relation to its strategic plan and annual budget. It delegates aspects of these functions to Committees, which operate under its overall guidance and report to it. The Audit Committee is responsible for ensuring that a system of internal control is maintained. Financial and non-financial performance is reviewed regularly against target.

Budget figures

- 2.15 A supporting analysis of the budgeted income and expenditure for probate is set out in Appendix 1.

Income

- 2.16 The total budgeted income for probate is estimated to be £50,000 in 2018 and £62,500 in 2019. This income relates solely to legal activities fees from firms wishing to be authorised to undertake probate activities.

Number authorised

- 2.17 The number of authorised individuals within ACCA firms is estimated to be 200 in 2018 and 250 in 2019. Registrations are likely to be from a mix of firm sizes, but predominantly sole practitioners and small firms. The number of authorised individuals cannot be guaranteed, but is expected to rise over the first few years. For the purposes of our initial projections, we estimate that the numbers will grow to 350 by the year 2021.

Authorisation fee

- 2.18 If a legal activities authorisation fee of £250 is charged, the projected income and expenditure shows an overall deficit of £3,440 over the first five years. This assumes that the authorisation fee stays level over the five year period and the implementation costs of £34,190 are absorbed over that period (see paragraph 2.22).

Fixed and variable costs

- 2.19 Annual fixed costs are anticipated in updating our regulatory processes, development of the course and assessment, Regulatory Board meetings, and the minimum levies payable to the LSB and Legal Ombudsman (which will be incurred by ACCA even if the number of authorised individuals is negligible). Fixed costs will also include the absorption of some departmental overheads.
- 2.20 Variable costs will be incurred in respect of the processes of authorising individuals and firms, handling complaints, monitoring reserved legal activities, interactions with the LSB (including annual reporting and responding to other oversight

requirements), and the variable element of the levies payable. Probate course fees will be met directly by the individuals enrolling with the training provider.

- 2.21 ACCA's regulatory arrangements for legal activities will, of course, also be supported by central services. The budgeted expenditure presented in this application does not include any element of central overheads (eg office, utility, IT costs) or time spent by the Executive Directors on legal activities regulation.

Implementation costs

- 2.22 The budgeted expenditure set out within this application includes historical costs associated with implementing legal activities regulation, including the costs of interactions with the Ministry of Justice, the LSB and others. However, for clarity, we have only considered costs incurred since ACCA became an approved regulator for probate in 2009. We have identified and quantified implementation costs of £34,190, which we anticipate will be recovered over a five year period, as uptake increases. We have been reserved in our attempts to recover costs, as we acknowledge that a proportion of the costs should be absorbed by the wider membership of ACCA. This is fair and reasonable, as ACCA's ability to regulate individuals and firms for probate work provides the opportunity to our members to undertake legal activities, as well as reputational benefits to the ACCA brand.

Consultation

- 2.23 ACCA has not consulted its regulated community on the proposed PCFs specifically for the purpose of this application, as there are currently no individuals or firms authorised for probate by ACCA.
- 2.24 However, in late 2016, ACCA consulted more than 18,000 members in practice in the UK regarding the provision of reserved legal activities and invited them to answer a short set of question about reserved legal activities, and to estimate how much their firms would be prepared to pay for a licence authorising an individual to provide one or more legal service. The information piece and online questionnaire also featured in ACCA's *In Practice* e-zine and were further promoted on the ACCA website.
- 2.25 We received 448 responses to the online questionnaire. The findings showed support among those that responded for ACCA to introduce probate authorisation. 44% of practitioners felt that the cost of an annual licence authorising one or more legal services should be between £50 and £250, and 46% were prepared to pay more. On this basis, the proposed PCFs of £250 would appear to be consistent with the expectations of most respondents.

3. PERMITTED PURPOSES

- 3.1 ACCA is prepared to be clear and transparent about its allocation of financial resources to the regulation of reserved legal activities. The income raised from legal activities authorisation fees will be applied solely to purposes which are permitted purposes, as set out in Section C of the Rules. The permitted costs include the regulation, accreditation, education and training of applicable persons¹, and the payment of levies imposed on the approved regulator.

¹ In respect of training, ACCA will not charge a fee for its probate training course and assessment, as this will be provided and charged for by Kaplan-Altior.

- 3.2 There is no intention to use income from PCFs for non-permitted activities.
- 3.3 In practice, income from other sources may be used for permitted purposes (as has been the case in respect of the costs incurred to date). However, in charging PCFs of £250, we do not anticipate the need for a budget subsidy for legal activities from ACCA's membership subscriptions, general PC fees, examination entry fees, etc going forward.

4. CLARITY AND TRANSPARENCY

- 4.1 ACCA will provide clear and transparent information on the PCFs on its website. Information on fees will also be included in the guidance factsheets and application/renewal forms for a firm's LAC and for authorised individuals (ACCA members and non ACCA members). These forms will also be made available on ACCA's website.

5. REGULATORY AND DIVERSITY IMPACT ASSESSMENT

- 5.1 ACCA seeks to ensure that the costs of regulation are met by the providers of the regulated activities. This application proposes PCFs for firms wishing to provide probate services that are proportionate, competitive and fair.
- 5.2 The proposed PCFs have been calculated with due regard to the regulatory objectives and consistency with the regulatory principles.

6. CONSULTATION WITH NON-COMMERCIAL BODIES

- 6.1 ACCA has not consulted with non-commercial bodies and the Legal Services Consumer Panel about the impact of its proposed legal activities authorisation fees on persons providing non-commercial legal services. We believe this is not pertinent to our application, as reserved legal activities authorised by ACCA will be provided out of commercial accountancy practices, and so it would be very unlikely that these legal activities would be charitable activities.

7. CONTACT DETAILS

- 7.1 Further information in respect of this application may be obtained by contacting:

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8. APPENDICES

The following enclosure forms part of this application:

Appendix 1 Supporting analysis of budgeted income and expenditure for probate

Appendix 1

Supporting analysis of budgeted income and expenditure for probate

	To 2017	2018	2019	2020	2021	2022	Total
Number authorised		200	250	300	350	350	
Authorisation fee		£250	£250	£250	£250	£250	
Total income		£50,000	£62,500	£75,000	£87,500	£87,500	£362,500
Fixed costs		17,900	17,950	18,000	18,050	18,100	90,000
Variable costs		28,288	48,384	52,080	55,876	57,122	241,750
Implementation costs	34,190						34,190
Total costs	34,190	46,188	66,334	70,080	73,926	75,222	365,940
Surplus / deficit	-34,190	3,812	-3,834	4,920	13,574	12,278	-3,440

Implementation costs

Dealing with lead regulators	£8,600
Establishing regulatory arrangements	8,880
Education and training (development costs not absorbed into course fees)	10,270
Staff training	6,440
	<u>34,190</u>