Practice Fee and Compensation Fund Contribution considerations in light of the COVID-19 pandemic

Introduction

The UK Government has advised that home sales and purchases are not essential transactions. This is having a significant impact on the practices which the CLC regulate as transaction volumes decline significantly or cease entirely.

In the survey of practices that asked for data on last week (30 March – 3 April), around half of firms reported a drop in instructions week-on-week of over 75%. That follows reductions reported over the previous two weeks of similar proportions, so that new business has now slowed to a trickle for conveyancing. Will-writing and probate are not, of course, similarly affected though those activities face practical challenges arising from social distancing requirements. Practices that are authorised for wills and probate work are likely to build on those revenue streams and other practices may seek to diversify into this work.

Many of the practices are planning to take or have already taken measures including furloughing staff, renegotiating debt, and/or taking advantage of government loans and payment deferrals (HMRC). HM Treasury released revised guidance on Government support measures being offered, it is too early to say whether these changes will make any of the measures more attractive to practices.

Although we expect the property purchase/sale industry to bounce back in the longer term, the short term economic effects of COVID-19 are likely to be particularly difficult for the majority of the CLC regulated practices.

Easing the financial challenge for firms

The CLC could provide financial assistance to practices by restructuring the payment of Practice and Compensation Fund Contributions. Most of which are taken monthly by direct debit.

There are a number of different ways that the CLC can offer financial support to practices. These are listed on page 4 of the paper. Having reviewed the alternatives we are proposing the following scheme which will provide support to the CLC regulated practices, whilst not putting the CLC under undue financial stress:

- Give each practice the **option** to defer the payment of the Practice and Compensation Fund contributions for three (3) months. The deferment would be for the April, May and June 2020 direct debit collections.
- Practices would also be given the **option** to repay the deferred fees over either four (4) or twelve (12) months, starting in July 2020.
- Any practice which would like to take advantage of the scheme would need to provide us with financial information supporting their application and details of actions they have taken and will be taking to support their practice. We will also need to consider whether it is appropriate to provide assistance to practices that may not have seen any decline in instructions at their practices.

This option provides practices with the ability to review and assess their financial position and decide whether they require a deferral and then select a repayment plan that is most suitable to their circumstances. Practices that do not initially take advantage of the scheme would be able to request support at a later stage, however they would not receive retrospective refunds if one or more of the direct debit payments have already been taken.

The CLC has sufficient reserves to be able to provide practices with a three month deferment of Practice and Compensation Fund Contributions. The benefit of a fee deferral arrangement is that the CLC will still receive the full 2019/2020 Practice and Compensation Fund Contribution, albeit over an extended period of time. This also enables the CLC to support practices while preserving reserves.

There is a risk that practices could still fail after taking advantage of this financial support. This would result in a loss of fee income to the CLC. This risk is explored further in the paper. The loss to the CLC is only marginally increased by these practices taking advantage of the scheme.

Should the current coronavirus-related restrictions be extended beyond June 2020, the CLC could review the need for further steps in the light of circumstances at the time.

Some practices have indicated that they have cancelled all their direct debit instructions and we expect that some other practices' collections will fail because of lack of funds. Ordinarily we would investigate and consider enforcement actions for non-payment. This scheme would enable practices to defer payments without precipitating disciplinary actions.

CLC practices will need to ensure that they continue to have PII cover (and pay PII premiums), even if they close temporarily because the fact of cover is determined at the point a claim is made (rather than at the point the cause of action arose). Any negligence claim made against a practice which has no PII in place is likely to result in an application for a grant out of the Compensation Fund.

Impact of COVID-19 on CLC Practices

The CLC has circulated to its regulatory community Government advice that conveyancers should continue to support the property sales process as far as possible and ensure their clients are aware of the difficulties of completing transactions in this period.

As at 31 March 2020, the CLC regulated 225 practices. A weekly survey is being sent to the practices, to gain an understanding of the impact of COVID-19 and the actions being taken by practices.

224 practices responded to the most recent survey, circulated on 27 March 2020; the results are summarised below.

- 198 practices (88%) have seen a reduction in the number of instructions they have received in the past week compared to the previous week.
- 177 practices (79%) reported a reduction in the number of instructions received in the past week compared to the number of weekly instructions received in March 2019.
- 90% of practices are able to continue to work partially or completely remotely.
- Practices are seeking alternative measures to fund and support their business. The table below summarises the measures being taken:

Measures	Number of practices	Percentage
Government scheme (Coronavirus Job Retention Scheme/Self-Employment Income Support Scheme)	153	68%
Deferring VAT and Income Tax Payments/HMRC Time to Pay Scheme	112	50%
Government loan (Coronavirus Business Interruption Loan Scheme)	72	32%
Redundancies (Temporary and Permanent)	50	22%
Increasing overdraft	39	17%
Closure (Temporary and Permanent)	31	14%
Other	32	14%
Unpaid leave for staff	26	12%
Bank loan	26	12%
Restructuring	23	10%
Not considering any changes at the moment	22	10%
Paid leave for staff	15	7%

- The majority of practices have advised that they are either able to service their debts for the foreseeable future or their business is debt-free.
- The latest survey results indicate that some practices are planning to focus on will writing and probate work as an additional revenue stream

The survey provided a field for practices to make comments on their financial position. Key responses relating to the CLC have been provided below (emphasis added):

- *"temporary **reduction** to clc fees or payment holiday"*
- *"**Not to pay CLC fund** for the next 3 months would help!"*
- *"…if we were to temporarily close the office whether we would be able to get a **rebate** on PI premiums or CLC Licence costs etc?"*
- *"will there be any **reduction** in the fees we pay each month to the CLC?"*
- *"Requests have been made to various for **payment holidays** including CLC"*
- *"The CLC should be considering anything and everything it can do for all firms, small and large, including **deferment of practicing fees**."*
- *"A **holiday** on the CLC compensation fund would help"*
- *"Will there be any **reduction** in the fees we pay each month to the CLC?"*

These comments and suggestions have been considered by the CLC when reviewing its collection of Practice fees and Compensation Fund Contribution during this economically challenging times.

Accordingly, the following six payment options have been identified and considered:

OPTIONS	
1	3 month payment deferral (April – June) – repayable in following 4 months to end of licence year
2	3 month payment deferral (April – June) – repayable over 12 months starting July 2020
3	3 month payment deferral (April – June) – repayable over either 4 OR 12 months starting July 2020
4	3 month payment deferral (April – June) – repayable over 12 months starting November 2020
5	3 month payment rebate – The CLC forgoes this fee income
6	7 month payment rebate to the end of the licence year – The CLC forgoes this fee income

- Option 1 & 2 may not suit all practices circumstances. Giving them an option on repayment arrangements seems appropriate. A repayment term in excess of 12 months has not been considered as it increases the CLC's risk of loss and is inconsistent with measures offered by government and financial service organisations.
- Option 3 (the preferred option) is a combination of options 1 & 2 and gives Practices some flexibility in repayment
- Option 4 would increase the CLC's reliance on reserves and increase the risk of non-payment because of the extended deferral.
- Option 5 & 6 would result in the CLC funding the lost revenue from reserves. Given the pressures and uncertainty expected in the medium term this seems to be an unnecessary risk to take at this time and is inconsistent with measures offered by government and financial service organisations.

Practices would be given the option of taking advantage of this scheme and deciding on the repayment terms. Any practice wanting to take advantage of the fee deferral will need to supply the CLC with information on their financial position, current reconciliations and their plans during and after the lockdown period before the deferral is granted.

Assumptions

This paper is based on the following assumptions, which were used in considering the options:

- The economy and businesses starts to recover from June 2020.
  - The UK has been put under lockdown for a three week period, with the Prime Minister outlining strict new measures from 23 March 2020 to help reduce the spread of COVID-19.
  - The UK Government is predicting a three month containment period, however this timescale is being monitored closely.
- Evidence from China indicates that business started to recover after three months from the time the outbreak started in Wuhan, in December 2019. Wuhan started to lifted sanctions towards the end of March 2020.

Should the containment period be extended, we will need to consider offering further relief and extension of the repayment periods.

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Practice Fee review

The table below provides a breakdown of the CLC regulated practices stratified by annual turnover. The range of Practice Fees received for each band as well as the total fees received for each turnover band in a month are summarised.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

It is also noted that 28% of CLC regulated practices engage in services other than conveyancing (i.e. probate, remortgage and will writing). It is likely that these practices will see less of an impact of the social distancing and lockdown imposed by the Government.

Compensation Fund review

The Compensation Fund Contribution was cut significantly by the CLC in the 2019/2020 licensing year. As evidenced by the table below, the monthly contributions are relatively small, and should not be overly burdensome on practices.

The table below provides a breakdown of the CLC regulated practices by their annual turnover, and provides a range for the Compensation Fund Contributions paid monthly and the actual fees received for each turnover banding. At present, £30,292 is received into the Compensation Fund each month.

[redacted]

We expect that any practice closures will occur during the 'recovery' phase i.e. post lockdown as operations and loan repayments are recommenced. At this stage, businesses will be in a clearer position to review whether they are able to repay their loan facilities or not. It is worth noting that the closure of individual small practices (turnover under £500k) would have a nominal impact on the Funding of the Compensation Fund.

Should practices close in the next 3 months or in the recovery phase, we would expect intervention cost to be lower than normal as practices would have a fewer (or none) live matters on their books. Costs would largely be related to taking custody of the practices books and records.

CLC Budgetary impacts

As at 31 March 2020, the CLC has sufficient cash reserves to continue as a Going Concern without revenues for at least a 12 month period, based on the current approved budgeted. It is clear however that these are not normal times, and that we will need to find ways to reduce our expenditure in the medium term.

This following factors are likely to reduce our reliance on reserves over the next 12 months:

- Income received during the Individual Licence renewal in October 2020 (although we may need to offer payment terms this year). We expect income received from the renewal to be relatively consistent to prior years, and that individuals will be looking to renew their

licences as we expect there to be a high demand for conveyancers post-lockdown. This is due to the following considerations:
    - The interest rate is currently at an all-time low. Therefore, consumers will be looking to purchase new properties, and also re-mortgage their properties.
    - Consumer confidence will be relatively high due to the initiatives and stimulus package offered by the Government.
- All or most Practice Fund and Compensation Fund Fees are likely to be received in the next 12 months. This would mean that reserves would be used to temporarily fund the organisation as a result of cash flow timing.
- Budgeted expenses can be reviewed and reduced, including the timing of new staff hires and replacements.
- In the longer 24 month period, more significant structural changes can be implemented to save further cost – for example home working coupled with smaller, cheaper offices.
- The financial impact to the CLC is likely to be felt in 12 to 24 months' time as the impact of reduced practice turnovers impact the amount of fees collected.
- Although it may not be comparable, following the 2007 market crash we saw rapid new practice growth and exceptional growth in turnovers.

Conclusion

The CLC needs to support its practices to ensure that they can continue to operate and provide essential services to their clients. The CLC must also ensure that practices provide high standards of consumer protection by taking a regulatory approach designed to support client-focused and innovative businesses. Based on the review undertaken above, including the availability of practices to access a large variety of schemes put in place by the Government, Option 3 provides the best overall support to the CLC regulated practices and the CLC.

This allows Practices to review and assess their financial position and decide which payment plan suits them. The CLC would still receive the Practice fee and Compensation Fund Contribution (albeit delayed), which will allow us to deliver effective regulation to practices, consumers and administer the Compensation Fund.