



Review of Licence and Practice Fee Arrangements
CLC Consultation Paper
June 2020

Deadline for receipt of responses: 5pm on Friday 3 July 2020

Managing the cost of regulation

1. Starting in 2016 the CLC has reduced Practice Fee rates 3 times, resulting in an effective cumulative decrease in Practice Fee rates of 42% from the levels set in 2016. We are seeking to reduce our costs and increase efficiency further within the area of costs that we control.
2. We have achieved these reductions in the regulatory burden despite a significant proportion of costs being outside our control. Those costs include the levies that fund the Legal Services Board (including the Legal Services Consumer Panel) and the Office for Legal Complaints/Legal Ombudsman (OLC). By far the largest of the two, and the one that continues to grow, is the levy to fund the OLC.
3. The final invoiced cost of the OLC to the CLC in 2019/20 was £422,832. That is almost double the 2011/12 cost (£229,164) and is projected to rise further, to £496,238 in 2020/21. Over this same period, the cost per case has increased from £1,181 to £1,822 and is projected to be £1,961 in the 2020/21 year.
4. This year, we have the as yet uncertain impacts of the pandemic and Brexit to take into account as we plan our work for 2021 and beyond and as we consider the resources that we need to fund that as we work with the regulated community through what could be challenging times for the home buying and selling industry. We are aiming to make the demands for payment sent to CLC practices more transparent this year by setting out clearly the different elements of the charges they are required to pay.

Setting Regulatory Fee Rates

5. The Council reviews fee rates annually and appropriate fee rates are set after considering:
 - a) Total turnover of practices under CLC regulation as well as the growth in turnover since the prior year
 - b) The CLC's projected expenditure to meet its regulatory obligations
 - c) Any Surplus being generated
 - d) Reserve levels
6. The CLC seeks to avoid volatility in practice fee rates, and aim not to increase practice fee rates soon after any prior reduction. Practice Fee reductions will only be considered if it is believed that the decrease can be sustained in future years.
7. The CLC is currently using excess reserves to Fund an operating deficit. The expectation pre coronavirus was that growth in Practice Turnovers through organic growth and new practices coming into CLC regulation would reduce the planned deficit and utilisation of reserves.
8. Whilst it is too early to come to any firm views of the impact of the coronavirus, there are clearly risks that:
 - a) The turnover of CLC regulated practice, and consequently CLC practice fee income, decline
 - b) Some practices decide to close further reducing practice fee income

- c) Fewer new practices come into CLC regulation
 - d) The CLC operates at an increased deficit unless it is able to reduce expenditure or increase fee rates
9. The CLC wishes to avoid any increase in Practice Fee rates unless absolutely necessary. As such the CLC is proposing to keep the Practice Fee rates unchanged at the level set in 2019 (see Annex 2).
 10. The increased deficit that will result from maintaining fees at their current rates will be absorbed by excess reserve utilisation and cost reduction.
 11. An increase in Practice Fee rates cannot be ruled out in 2021 if the recovery in practice turnovers is slower than expected.
 12. The Compensation Fund contribution rates were reduced by 60% in 2019. The CLC was able to do this as it was judged that the Fund was sufficiently funded at the time and the CLC wished to reduce the accumulation of reserves.
 13. The CLC proposes to maintain the Compensation Fund Contribution at their current rates (see Annex 2).
 14. Should claims against the Compensation Fund increase in 2021/21 as a result of the coronavirus the CLC will need to consider increasing Compensation Fund Contribution rates in 2021 to replenish reserves.
 15. The individual licence fee charged to CLC lawyers providing conveyancing and/or probate services will remain unchanged at £400.
 16. The other current fee rates are set out at Annex 3. The CLC's current view is that they should remain unchanged.
 17. Notification of the fees payable for the licence year starting 1 November 2020 as approved by the LSB will be published in September 2020.

Questions

1. Do you have any comments on the objectives for determining fee rates set out at paragraph 30?
2. Do you have any comments on the factors which are likely to impact fee rates set out at paragraph 31?
3. Do you have any other comments on the fee structure and process for determining the Regulatory Fees payable for the licence year starting on 1 November 2020?

Please explain with as much detail as possible why, if that is the case, you do not agree to any of the objectives or principles proposed for determining fee rates.

Responding to this Consultation

18. You are invited to respond to the questions set out above.
19. When you respond could you please give your name and address and whether you are a CLC Lawyer. If you are not a CLC Lawyer, could you please state, if relevant, your status or professional qualification. The CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential could you please let us know when you respond.
20. All responses should be sent by email to consultations@clc-uk.org or by post to

The Council for Licensed Conveyancers
We Work
131 Finsbury Pavement
London EC2A 1NT

Or to DX42615 CHEAPSIDE

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Statutory Framework

21. The Council for Licensed Conveyancers (CLC) was established by the Administration of Justice Act 1985 (AJA) and is an Approved Regulator under the Legal Services Act 2007 (LSA), subject to the oversight regulation of the Legal Services Board (LSB). It licenses and regulates CLC Lawyers and CLC Practices in the provision of reserved legal activities, currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.
22. As an approved regulator the CLC 'must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives'.¹

CLC's Approach to Regulation

23. The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
24. The CLC's regulatory activities include:
 - setting educational and training standards for entry to the profession
 - issuing licences to practise to those qualified to provide conveyancing and probate services and to Alternative Business Structures
 - maintaining a register of all CLC Lawyers and CLC Practices
 - setting standards to regulate the professional practice, conduct and discipline of CLC Lawyers and CLC Practices
 - setting standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers
 - monitoring the work and conduct of CLC Practices
 - providing guidance and advice to CLC Practices to maintain compliance with our regulatory requirements
 - investigating allegations of misconduct and where appropriate taking disciplinary action and
 - collaborating with key stakeholders in the legal services market to monitor and shape future policy.
25. The CLC's approach to regulation is proportionate, risk-based and outcomes-focused. Licence holders are required to demonstrate that they:
 - act with independence and integrity
 - maintain high standards of work
 - act in the best interest of clients
 - deal with regulators and ombudsmen in an open and cooperative way and
 - promote ease of access and service.

¹ S.28(2) LSA

Fee Approval Process

26. Under s.51(5) LSA 'a practising fee is payable under the regulatory arrangements of an approved regulator [such as the CLC] only if the Board has approved the level of the fee'. As required by s.51(4) LSA those rules specify the permitted purposes for which fees received may be applied (see Annex 1).
27. The Deadline for receipt of responses to this Consultation is 3 July 2020. This allows a short period for the responses to the Consultation to be assessed before a final proposal is put to the Council for determination at its meeting at the end of July 2020.
28. A formal application for approval will then be made to the LSB with a view to consent to the CLC's Fees Rules being granted by September 2020, so allowing a reasonable period for the profession to be notified of the new arrangements for Licence and Practice Fees in time for the licence year commencing 1 November 2020.

Current Funding Arrangements for the CLC

29. The CLC is wholly funded by the profession and, through the profession, by consumers. Since 1 November 2010 the regulatory charges have been as follows:
 - a. The same licence fee payable by all CLC Lawyers
 - b. A Practice Fee payable by all CLC Regulated Entities (determined as a percentage of turnover with bandings)
 - c. A contribution to the CLC's Compensation Fund payable by all CLC Regulated Entities (determined as a percentage of turnover with bandings).

The scale of charges is dependent on the CLC's forecast expenditure requirements as set out in the budget which is approved by the Council at its meeting in July for the financial year commencing the following January.

Fee setting Objectives

30. It is proposed that the following overriding objectives are applied when determining fee rates for the next cycle commencing 1 November 2020.
 - a. Fee setting in general is determined with the aim of generating no more than a nominal surplus each year.
 - b. A managed deficit can be used when sufficient excess reserves are available to fund a decrease in fee rates.
 - c. Fees are set at a level that recovers the cost of regulation of practices and individuals, except where the minimum reserve in either the Practice or Compensation Fund needs to be 'topped up'.
 - d. Fees charged are consistent year on year, with the expectation that fee rates reduce as economies of scale are realised and practice turnovers increase.

- e. Fee rates (Practice fees and Compensation contributions) are increased only in exceptional circumstances, such as a prolonged economic downturn where minimum reserves cannot effectively absorb losses.

Factors applicable in setting fee rates

31. The factors which are likely to impact the fee rates are:

- a) Total turnover of practices under CLC regulation as well as the growth in turnover since the prior year

Practices renew their Professional Indemnity Insurance in June. As part of the process they declare their turnover to the insurers which then pass the figures on to the CLC to use in setting the fees for the next fee year starting in November. Overall turnover is likely to have remained static or reduced, which will impact the CLC revenue.
- b) The CLC's projected expenditure for 2021

In July our proposed expenditure will be forecast based on the best estimates at hand, any significant fluctuations from the current budget will need to be considered when setting fee rates.
- c) Land registry statistics which provides current data about the conveyancing market

Over the last 36 months transaction data have shown a gradual downward trend. The February transaction volumes were the lowest over the 36-month period. Should the March to May 2020 figures continue to show the same trend, this would indicate that turnovers are likely to decline in the next 12 to 24 months and that we should consider a more prudent approach.
- d) The current state of the wider economy

Indicators available in June will contribute to our outlook over the forecast period and may impact our turnover growth assumptions.
- e) Projected pipeline of practices coming into CLC regulation

An increase in new practices switching regulator, or interest from practices would indicate that our assumptions are correct and could warrant a more bullish approach. Conversely, little interest and practice closures over the next quarter would suggest a more cautious approach.
- f) For the Compensation Fund, analysis of the current level of claims

We have assumed that grants out of the Compensation Fund will remain at similar levels to the past 2-3 years. Any significant additional claims or interventions may impact the expenditure on the Compensation Fund which would result in a more prudent approach to rate cuts.

Annex 1
Permitted Purposes
Extract LSB Practising Fee Rules

Monies raised through practising fees must not be applied for any purpose other than one or more of the permitted purposes.

The permitted purposes are:

- (a) the regulation, accreditation, education and training of applicable persons and those either holding themselves out as or wishing to become such persons, including:
 - (i) the maintaining and raising of their professional standards; and
 - (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
- (b) the payment of a levy imposed on the approved regulator under section 173 [Legal Services Act 2007] and/or the payment of a financial penalty imposed on the approved regulator under section 37 of the Act;
- (c) the participation by the approved regulator in law reform and the legislative process;
- (d) the provision by applicable persons, and those either holding themselves out as or wishing to become such persons, of legal services including reserved legal services, immigration advice or immigration services to the public free of charge;
- (e) the promotion of the protection by law of human rights and fundamental freedoms;
- (f) the promotion of relations between the Approved Regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions;
- (g) increasing public understanding of the citizen's legal rights and duties.

**Annex 2
Current Fee Rates**

Practice Fee

Turnover Banding		Practice Fee payable				
From	To	Minimum Fee in Band				
0 and	£100,000	£539	or	0.77%	Of Turnover	Whichever is the greater
		Minimum Fee in Band			On Turnover in excess of	
£100,001	£500,000	£770	plus	0.70%	£100,000	
£500,001	£3,000,000	£3,570	plus	0.63%	£500,000	
over	£3,000,000	£19,320	plus	0.56%	£3,000,000	

Compensation Fund Contributions

Turnover Banding			Compensation Fund contribution			
			Minimum Fee in Band			
Between	0 and	£100,000	£500			
			Minimum Fee in Band			On Turnover in excess of
Between	£100,001 and	£500,000	£500	plus	0.16%	£100,000
Between	£500,001 and	£3,000,000	£1,140	plus	0.12%	£500,000
Over	£3,000,000		£4,140	plus	0.08%	£3,000,000

**Annex 3
Other Fees Charged**

		Fee	Paragraph	Regulatory Arrangements
1.	Probate Licence	£75	1(a)(ii)	CLC Lawyer – Licensing Framework
2.	First Manager Licence Application	£150		
3.	Duplicate licence	£50	16 & 18	CLC Lawyer – Licensing Framework
4.	Amendment to licence	£75	26	CLC Lawyer – Licensing Framework
5.	Failure to submit Accountant's Report in time	£100	16.2	Accounts Code and Guidance