**Summary of Consultation Responses: Review of Licence and Practice Fee Arrangements**

**July 2021**

The CLC received five formal responses to this consultation from:

1. The Society of Licensed Conveyancers **(SLC)**
2. Simon Law (JS Law and DC Law) responding on behalf of the Simplify Group **(Simplify)\***
3. Connect2Law trading as Muve **(Muve)**
4. Cartin Lincoln Haynes; a sole practitioner **(CLH)**
5. The Office for Legal Complaints **(OLC)**

\*Note that the responses for the SLC and Simplify were duplicates.

|  | **Question** | **Summary of responses** | **CLC response** |
| --- | --- | --- | --- |
| **Part 1: Separate billing for OLC charges** | | |  |
| 1 | Do you agree with the CLC’s proposal to remove the OLC charge from the Practice Fee and charge it to practices separately on a ‘user pays’ basis? | The SLC and Simplify stated that while they have no objection to removing the OLC charge, they have ‘concerns’ over charging it on a user-pays basis (see Q4).  Muve, CLH, OLC agreed with the proposal in principle. Muve noted that it is right that there should be incentives to reduce complaint levels. | The proposal was generally supported.  The concerns raised by SLC and Simplify were set out in detail in response to question 4, below and are addressed there. |
| 2 | Do you agree that all practices should pay an OLC availability fee regardless of whether they have any active cases being investigated by the OLC? | 4 responded Yes, and the OLC did not respond specifically to this question.  Muve added that ‘this should initially constitute 100% of the OLC charge to the CLC firms with the OLC usage fee phased in over the first 3 years.’ | The proposal was generally supported.  We have considered the phased introduction of the ‘user pays’ element of contributions to the OLC’s costs.  Phasing in of the user pays element of the cost would mean that practices with lower or no OLC cases would continue to subsidise those practices with high cases numbers. When viewed together with rapidly increasing OLC cost per case, it supports the case of an immediate implementation which will incentivise those practices to look at their service levels and particularly their complaints handing process.  There is also an element of fairness attached to this change. This cost is driven by activity and many practices are paying for this activity even if they have had no activity or low activity over the last 3 years. It would be difficult for the CLC to justify a phasing in to support practices that are driving possibly and unnecessary cost.  The OLC cost recharge to the CLC is also growing at unmanageable levels (see annex to this document). Although there will be short term cost increase to some practices, this action will benefit the whole regulated community by lowering cost and also have consumer benefit in that complaints are prioritized and resolved quickly.  Most practices will see a reduction or marginal increase in their regulatory cost under the ‘user-pays’ model. Given that only a small group of firms will face significant increases, and in view of the additional complications of phasing in the model, we do not propose to phase in the ‘user-pays’ element. |
| 3 | Do you agree that the OLC availability fee should increase with turnover? | Muve and CLH responded Yes and OLC did not respond.  SLC and Simplify noted that this was difficult to respond to without data on which size practices have on average the most cases. However, they agree on the assumption that practices with higher turnovers will use the OLC more. | The proposal was supported. |
| 4 | Do you have any other thoughts or recommendations on the proposal to separate the OLC recharge from the Practice Fee and to bill this charge separately on a user pays basis? | **CLH** noted that it seems like a much fairer system.  **SLC and Simplify:**   * Noted the 3 year rolling period seems very low across all bandings. * Contest the assertion that firms with more referrals to OLC have ineffective complaints-handling * Noted that in their experience matters are more likely to be referred to OLC where the complaint is about seeking more financial compensation than what has already been offered. * Most cases are dealt with informally and with the £400 case fee waived if the firm meets exemption criteria. So the OLC usage fee would encourage practices to offer higher sums of compensation. * The pandemic will likely have increased referrals to OLC considerably. The increased pressure on practices during this time should be considered so that calculations during the implementation period are not distorted. * The proposal will change the dynamic between practices and the OLC and continue to erode practices’ confidence in the OLC.   **Muve:**   * Basing the OLC usage fee on number of cases referred to OLC cannot be a meaningful or fair measure. The only fair measure would be the number of complaints upheld by the OLC.   On the method of implementation   1. Many firms that effectively ‘buy-off’ a complainant before a complaint is taken to OLC will benefit from the proposal in terms of reduced fees. This is not fair for firms who accept and comply with current OLC process. 2. The proposal will incentivise firms to pay out as much as £1000 to each complainant – this will be cost effective given the scale of the OLC usage fee levy. An associated drop in referrals from CLC firms will disrupt the OLC usage charging structure. The incentive for firms to ‘buy-off’ potential complaints needs to be removed. 3. We are concerned that the CLC is potentially using its powers on OLC Usage charging for an improper purpose, namely retention of membership, rather than simply passing increased costs to members according to established principles.   **OLC:**   * Approach could encourage firms to make a commercial decision in order to avoid paying levy fees. * Proposal could distinguish between cases where there is evidence of poor and reasonable complaints handling and this could disadvantage those who take the correct steps to resolve at first tier. The OLC is happy to share this data and would be interested to see how it affects modelling. * It is not proportionate to charge those who have dealt with complaints correctly and offered appropriate outcomes through an activity-based recharge model. | The key point raised in these responses is that the model will create an incentive for practices to offer at first tier more compensation than a complaint merits in order to avoid the potential expense of a referral to the OLC. We propose to monitor trends in first tier and second tier complaints to understand how their handling might be changing under the new model. We will encourage practices to make changes to their process, service levels and complaint handling to try and address the number of referrals to the OLC. We recognise that there will always be complaints that need to be referred for adjudication, however with the high cost of the OLC service and the continuing increase in CLC cases, we need to ensure that practices manage complaint handling effectively so that the whole regulatory community doesn’t suffer with the increased cost.  Second tier complaints that can be resolved without a decision by the OLC are likely to be complaints that could have been resolved successfully at first tier. One of the main ambitions of the new model is to incentivise practices to improve complaints handling to reduce referrals to OLC.  The CLC and the profession are in a difficult position. OLC costs are increasing due to fewer case numbers overall and a larger proportion being allocated to CLC regulated practices. This trend is at odds with practices from other regulators. We need to tackle the rising case numbers by allocating the cost to those practices with high case numbers, this should incentivise them to address the issues and reduce the incidence of cases being referred. Paying off clients and not addressing underlying procedural issues is not an acceptable means of resolving the problems and will be closely monitored.  Comparably sized practices can have very different numbers of complaints. This may be due to a policy of settling claims, however service levels and complaint handling must be a factor in these differences.  We have also noted a correlation between practices with very high case numbers, consumer complaints to the CLC and conduct referrals to the CLC from the OLC. This supports the concern that these practices do have weaknesses in their service levels and complaint handling processes.  The impact of the pandemic and the land tax holidays on the level of complaints is not known yet, but there is no reason to amend the model on the basis of the proportion of transactions that give rise to a complaint. Indeed, increases could signal a need for even closer attention to complaints handling.  We expect that the new model will ensure that practices understand better the implications of a referral to the OLC and make greater efforts to avoid referrals. All complaints referred to the OLC contribute to the costs of the organisation, not only those where there is a decision in favour of the complainant.  The proposed method of charging practices directly mirrors the way the OLC allocated cost to the CLC (by using a 3 year average of case numbers) If the LSB and the OLC deem this acceptable and fair then it would be reasonable to pass it on to practices using the same allocation model.  Given that the number of complaints upheld by the OLC is a comparatively small proportion of complaints referred, the distribution of cost would be skewed extremely to those practices that had a complaint upheld. This could result in the contribution to OLC costs for those firms resembling a punitive fine rather than cost recovery. The alternative would be to charge those practices the costs of their complaint and require the entire regulated community to continue to fund the costs of the OLC in cases where the complaint is not upheld. This would continue to see many firms paying disproportionately high contributions.  Not all practices will see increased or significantly increased costs only those that have disproportionate levels of complaints referred to the OLC are likely to see material cost increases. The new model addresses the disproportionate costs currently borne by those practices that have few or no referrals to the OLC. The reduction of the practice fee to offset some of the OLC cost, means that practices can still have a reasonable number of cases without incurring additional regulatory cost.  The CLC will encourage practices to improve service levels and complaint handling rather than pay off clients and not dealing with underlying service issues. The CLC intends to monitor this and will, if necessary, take action against this type of behaviour.  As outlined above, the CLC will monitor trends in complaints handling at first and second tier closely to understand the impact of the new model. The CLC’s share of the OLC caseload is not such that changes to it should have any significant impact on the OLC’s costs and charging structure.  The intention of the proposals is to apportion the OLC’s costs more fairly. Rather than driving retention of firms in regulation by the CLC, there may be a risk that firms with high levels of complaints are attracted to move to another regulator that follows a charging model closer to the CLC’s current one.  As outlined above, the CLC, with the assistance of the OLC, will monitor closely the impact of the new model on complaints handling at first and second tier.  We have asked the OLC to work with us to review this data to see its impact, but our belief is that it would skew the costs too heavily to a small number of practices or require firms with low or no complaints to continue to pay a disproportionate share of the OLC’s costs.  At the moment, practices with few or no complaints referred to OLC are paying disproportionately for the costs of the organisation. Basing charges on usage is a fairer method than a general levy. |
| **Part 2: Practice fee banding** | | |  |
| 5 | Do you agree with the CLC proposal to increase the number of fee bands? | SLC, Simplify and CLH responded **Yes.**  Muve and OLC did not respond. | The proposal was supported. |
| 6 | Do you think that additional bands should be added, over and above those being proposed? – if so, please specify. | SLC, Simplify and CLH responded **No.**  Muve and OLC did not respond. | No additional bands were suggested. |
| 7 | Do you agree with the principal of reducing fee rates as turnover increases? | SLC and Simplify said **Yes.**  CLH said **No.**  Muve and OLC did not respond. | Opinion was divided. The CLC considers that a degree of tapering in fee rates is needed to ensure to deliver a more proportionate division of costs. |
| 8 | Do you agree that we should be charging a minimum fee on turnovers under £100,000? | SLC, Simplify, and CLH said **Yes.**  Muve and OLC did not respond. | The proposal was supported. |
| 9 | Do you think that the minimum fee should be set at a higher amount? | SLC, Simplify and CLH responded **No.**  Muve said **Yes** as it will discourage poorly capitalised market entrants.  OLC did not respond. | Only one respondent suggested a higher minimum, as a means of controlling market entry. The CLC does not want to put in place unreasonable barriers to market entry and has ensured that increases at the lower end are modest and still below the level of past fees as a result of CLC cost-cutting in recent years. |
| 10 | Do you think that the Practice Fee could be collected using a different model? – if so what model of collection do you propose and why? | SLC, Simplify and CLH responded **No.**  Muve and OLC did not respond. | No alternative collection models were suggested. |
| 11 | Do you have any other thoughts or suggestions relating to the proposed fee banding and fee rates? | Only CLH responded to this question and said:   * It is difficult to judge the fairness of proposals without seeing data on number of OLC complaints and amount of CLC admin/resource dedicated to different size firms. * The presumption that small practices will have insufficient resource to maintain standards is very unfair. Large firms also face resource risks. * Sole practitioners are less likely to have complaints to OLC but are the only bracket with fees increasing substantively. It seems as though CLC is trying to price small firms out of the market and this would have a negative consumer impact. | It is clear that, even with the small increases to charges for the smallest practices, the fees collected will fall some way short of cost recovery for the organisation. The structure of CLC fees reflects the objective of supporting an innovative and diverse conveyancing and probate sector as well as the imperatives of funding. Smaller practices are less likely to have complaints referred to the OLC. Over the last 3 years only 2 of the 20 smallest practices have any cases at the OLC (one each) |
| **Part 3: Setting Regulatory fee rates** | | |  |
| 12 | Do you agree that if the Practice Fee bandings change that the Compensation Fund bandings should be adjusted to mirror the Practice Fee bandings? | SLC and Simplify said **Yes.**  CLH said **No.** The risks applying to practice fee and compensation fund are different.  Muve and OLC did not respond. | The comment from CLH is dealt with in the response to question 14, below. |
| 13 | Do you agree with the CLC proposal to not amend the other fees listed in Annex 2? | SLC and Simplify said **Yes.**  Muve and OLC did not respond.  CLH commented that they would need more data on the cost to the CLC of different applications. CLH also commented that a greater levy should be incurred by practices that do not submit an accountants’ report on time as this would likely use more CLC resource and time. | We will give consideration in future as to whether an additional charge should be applied in the event of late submission of accountants’ reports. |
| 14 | 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 2021? | SLC and Simplify said **No.**  Muve and OLC did not respond.  CLH noted that if a large firm ceases trading, the risk to the Compensation Fund is high.  It is concerning that there are so many more larger firms regulated by the CLC and feel the compensation fund should be built up, but not purely at the expense of small practices. | It is quite right that the Practice Fee and Compensation Fund risks are different and the failure of, or intervention into a large practice would be likely to have a greater impact on the Compensation Fund than that of a smaller practice. While fee rates taper as turnover increases, Compensation Fund contributions are progressive and grow as a practice grows larger, reflecting that risk. |
| 15 | 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 | CLH noted again that:   * It seems the intention of the CLC is to price smaller firms out of the market and that this is being excused on the basis of making a fairer system for larger, more profitable firms. * Concerns about practices and their chosen business model should be raised at inspection rather than introducing a blanket policy that penalises certain other business models. * The fact that a Licensed Conveyancer cannot choose their regulator introduces a further element of unfairness. | The modest increases to fees for the smallest practices are not intended to inhibit those practices. As has been noted above, the practice fee for those firms will remain lower than it has been historically. The CLC’s ongoing desk-based monitoring and supervision, alongside risk profiling and frequent inspections of practices, are how we address problems in practices.  Licensed Conveyancers are able to seek to be regulated by other regulators or conveyancing or probate. |

**ANNEX – CLC AND OLC COST ANALYSIS**

1. The trends in CLC operating cost and OLC levy cost is illustrated in the table below. The OLC levy has significantly increased year-on-year since 2016, whereas The CLC operating cost has largely remained flat over the same period. Over the same period the OLC cost as a percentage of total cost has increased from 9% to 23%.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **CLC Operating expenditure split between direct and OLC costs** | **2015-16** | **2016-17** | **2017-18** | **2018-19** | **2019-20** | **2020-21** | **2021-22** |
| CLC Operating expenditure | 2,503,187 | 2,239,557 | 2,137,158 | 2,326,626 | 2,533,584 | 2,585,879 | 2,343,484 |
| YoY (Decrease)/Increase in CLC operating expenditure |  | -11% | -5% | 9% | 9% | 2% | -9% |
| OLC cost | 239,857 | 234,009 | 302,873 | 340,015 | 422,831 | 519,717 | 686,511 |
| YoY Increase in OLC cost |  | -2% | 29% | 12% | 24% | 23% | 32% |
|  |  |  |  |  |  |  |  |
| **Total CLC cost** | **2,743,044** | **2,473,566** | **2,440,031** | **2,666,641** | **2,956,415** | **3,106,984** | **3,029,995** |
| **YoY (Decrease)/Increase in total CLC costs** |  | **-8%** | **-2%** | **9%** | **10%** | **4%** | **-6%** |
|  |  |  |  |  |  |  |  |
| **OLC cost as a % of total CLC cost** | **8.7%** | **9.5%** | **12.4%** | **12.8%** | **14.3%** | **16.7%** | **22.7%** |
|  |  |  |  |  |  |  |  |

1. The trends in the OLC case numbers and cost per case are summarised in the table below.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **OLC cost and case analysis** | **Apr 2015 - March 2016** | **Apr 2016 - March 2017** | **Apr 2017 - March 2018** | **Apr 2018 - March 2019** | **Apr 2019 - March 2020** | **Apr 2020 - March 2021** | **Apr 2021 - March 2022** |
|  |  |  |  |  |  |  |  |
| CLC case numbers | 152 | 184 | 217 | 232 | 232 | 253 | 263 |
| **Total case numbers** | **8,357** | **7,637** | **7,282** | **7,226** | **6,216** | **5,947** | **4,962** |
|  |  |  |  |  |  |  |  |
| **CLC % of cases** | **1.82%** | **2.41%** | **2.98%** | **3.21%** | **3.73%** | **4.25%** | **5.30%** |
|  |  |  |  |  |  |  |  |
| Final cost to CLC | 239,857 | 234,009 | 302,873 | 340,015 | 422,831 | 519,717 |  |
| Estimated cost to CLC | 202,982 | 259,665 | 322,573 | 364,672 | 422,533 | 496,238 | 686,511 |
| Estimated total cost | 11,180,000 | 10,610,000 | 10,697,000 | 11,247,528 | 11,232,000 | 11,592,000 | 13,031,275 |
| Actual total cost | 13,187,401 | 9,712,645 | 10,163,692 | 10,590,295 | 11,328,955 | 12,216,431 |  |
|  |  |  |  |  |  |  |  |
| **Estimated cost per case** | **1,335.41** | **1,411.22** | **1,486.51** | **1,571.86** | **1,821.26** | **1,961.42** | **2,610.31** |
| Actual cost per case | 1,578.01 | 1,271.79 | 1,395.73 | 1,465.58 | 1,822.55 | 2,054.22 | - |

1. The key observations from this analysis are that:
2. The numbers of cases originating from CLC regulated practices have been steadily increasing over the past 7 years and for the current year is expected to reach 173% of the 2015-16 number.
3. The total number of cases investigated by the OLC have been decreasing steadily over the past 7 years.
4. Because the cost is allocated on a per case basis, the OLC cost allocated to the CLC has been increasing as we have a higher percentage of the total case numbers.
5. Over the previous 5 years the CLC share of the OLC cases have increased from 1.82% to 5.3% - this means that the proportion of cases associated with CLC regulated practices have increased almost 3-fold
6. OLC operating costs have not increased significantly over the past 7 years - the annual growth rate is around 2.2%.
7. The increase in the cost per case is primarily due to a 40.6% decrease in case numbers without a corresponding decrease in cost.
8. Complaints against CLC firms remain low in absolute numbers but are expected to have increased by 73% between 2015-16 and 2021-22. However, the cost of the OLC to the CLC is expected to have nearly tripled over the same period, from £239,857 to a projected £686, 511.
9. Assuming the above trends continue without intervention, the CLC and the regulated community can expect to see significant year-on-year cost increases over the short to medium term.