



## **Approval of 2022 Practising Certificate Fee (PCF) application made by the Council for Licensed Conveyancers (CLC) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

1. The LSB has approved an application made by the CLC to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A practising fee – PCF – is payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act and rule 8 of the Practising Fee Rules 2021 (Rules)<sup>1</sup>.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. The CLC is an approved regulator which has solely regulatory functions and no representative functions.
4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. The Rules specify the permitted purposes that the practising fee may be applied to, the criteria and material the LSB will consider before deciding to grant an approved regulator's application in whole or part, the information approved regulators are required to submit and the application process and procedure. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)<sup>2</sup> which gives guidance on each of the Rules.
5. This notice sets out the decision taken, including an assessment of the PCF application.

### **Summary and overview of PCF application and decision**

6. The CLC submitted a PCF application to the LSB on 3 September 2021 (first application). In a decision notice<sup>3</sup> dated 20 October 2021 the LSB refused the first application (first decision notice) and required the CLC to resubmit its application to address matters raised therein.

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf>

<sup>2</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf>

<sup>3</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/CLC-PCF-Decision-Note-20-October-2021.pdf>

7. On 21 October 2021, the CLC wrote to the LSB with a variation of its 3 September 2021 application (second application) which it had made to address certain matters in the first decision notice. The CLC confirmed it wished for the LSB to consider as part of the second application, the first application which remained the same other than as varied on 21 October. This decision notice is on that second application, which includes content from the first application and will be referred to where relevant in this decision notice.
8. The second application varies the CLC's original proposed change to its PCF structure and a significant change to its methodology for apportioning the Office of Legal Complaints (OLC<sup>4</sup>) levy component of the PCF across its regulated community.
9. The CLC levies a PCF on all CLC regulated practices, which is based on the practice's turnover. The current turnover bandings were introduced in 2010 and have not been amended since implementation. The proposed fee structure is as follows:
  - Individual licence fees payable by CLC lawyers providing conveyancing services or probate services will remain unchanged at £400 and £475 for both, for 2021/22<sup>5</sup>.
  - PCF payable by CLC regulated practices will continue to be based upon a percentage of turnover, but there is proposed increase in the number of turnover bands from 4 to 9.
10. The new turnover bands for PCF are as follows:

<b>Turnover banding</b>	<b>Practice Fee</b>
Up to £100,000	£580
£100,001 - £250,000	£580 plus 0.554% of turnover in excess of £100,000
£250,001 - £500,000	£1,411 plus 0.530% of turnover in excess of £250,000
£500,001 - £1,000,000	£2,736 plus 0.490% of turnover in excess of £500,000
£1,000,001 - £2,000,000	£5,186 plus 0.481% of turnover in excess of £1,000,000
£2,000,001 - £4,000,000	£9,996 plus 0.474% of turnover in excess of £2,000,000
£4,000,001 - £8,000,000	£19,476 plus 0.425% of turnover in excess of £4,000,000
£8,000,001 - £16,000,000	£36,476 plus 0.421% of turnover in excess of £8,000,000
£16,000,001 and over	£70,156 plus 0.418% of turnover in excess of £16,000,000

<sup>4</sup>The OLC is the board of the Legal Ombudsman which investigates complaints about lawyers in England and Wales.

<sup>5</sup> All other charges that were summarised in Appendix A of the first application would also remain unchanged.

11. CLC proposes to remove the cost of the OLC (£686,511) from the PCF, which it will collect separately. As the LSB's approval is required under section 51 for the OLC to collect the practising fee including the levy, for the purposes of this decision notice the PCF constitutes the total of both the OLC levy and PCF.
12. The CLC's proposal is for the OLC levy to be based on two elements:
  - (1) OLC availability fee – 70% of OLC costs - that will be apportioned to practices based on the ratio between their practice fee and the total practice fee collected<sup>6</sup> and
  - (2) a OLC usage fee – 30% of OLC costs -of **£950.23** per case accepted by the Legal Ombudsman based upon the average number of cases accepted over the last 3 years (using OLC data).
13. We are satisfied that the CLC's activities for 2021/22 which will be funded by the PCF fall within the permitted purposes, in compliance with section 51(2) of the Act.
14. The second application considers the estimated impact of the proposed PCF on persons with protected characteristics under the Equality Act 2010. It concludes that, on the evidence held, there is no indication that the proposed level of PCF will adversely impact persons with protected characteristics.
15. The LSB's decision is to approve in full the levels of the PCF for 2021/22 to be charged to individuals as set out in the second application.

## **LSB assessment**

### OLC Levy

16. In its first decision notice, the LSB noted that we support the outcomes that the CLC is pursuing through this change methodology in calculating the PCF overall but was concerned, as summarised below, that the CLC's:
  - the proposed approach to levy 80% of the OLC costs on firms subject of complaints to the Legal Ombudsman, could serve to disincentivise proactive engagement by firms with first tier complaints handling, as it would penalise even those practices who have handled complaints well
  - attempts to engage and consult the profession on this change have not been adequate or effective.
17. The second application – which includes a revised implementation plan - has been developed by the CLC to address those two areas of concern.
18. The CLC has significantly rebalanced the proportion of OLC costs to be recovered through the availability and usage fees. In the initial proposal 20% of costs were proposed to be recovered from the availability fee charged to all practices based upon turnover. The remaining 80% was proposed to be recovered through the usage fee, which equates to a case fee of £2,087.66 per case referred to the Legal Ombudsman.
19. The revised proposal is for 70% of OLC costs to be recouped through the availability fee and 30% through the “usage fee”. This has the effect of reducing the cost to firms of each referral to the Legal Ombudsman from £2087.66 to £950.23.

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<sup>6</sup> Practice Fee/Total Practice Fees collected\*Total Availability Fee

20. The CLC has explained that its aim over the next 3-4 years is to increase the usage fee element of the OLC. Any such change will be subject to policy objectives, trends and data collected through monitoring of complaint handling. It will also be subject to the LSB's annual scrutiny of proposals through the PCF application process.
21. At Paragraphs 19-26 of the revised implementation plan the CLC has set out its approach to monitoring the impact of its proposals. This includes real time review of information in relation to the impact of the proposal through a range of tracking metrics, the tracking of payments made in settlement of first tier complaints, data from OLC and enhanced monitoring of practices who fall into the category of having a high proportion of complaints.
22. We consider the second application with the revised proposals provide assurance that the risks set out at Paragraphs 14-18 of the first decision notice will be monitored and responded to in real time. This also mitigates, to some extent, the limited engagement achieved during consultation, one of the concerns that led to the LSB's decision to refuse the first application.

#### Allocation of practising fee to permitted purposes

23. The CLC's programme of activity is linked to its strategic objectives agreed by the CLC Council. All PCF income will be used for permitted purposes that are regulatory functions, with the majority for the regulation, accreditation, education and training activities. The CLC has also set out the level of funding required to deliver its core activities.
24. The CLC has explained that its 2021 Business Plan sets out the activities that underpin the achievement of its strategic objectives. It further explained that its business plan for 2022 is currently in development. However, it has identified key areas of work that are set out at paragraph 98 of its initial application.
25. We are satisfied that the CLC has complied with the two guiding principles in setting the PCF, that is, that the PCF must be allocated solely for permitted purposes set out in section 51 of the Act and rule 8 of the Rules, and that it will discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.
26. To support greater accountability, and in line with the expectations set out in the Rules, in next year's application we will expect a greater explanation of how the CLC plans to measure and evaluate its activities, including its ongoing regulatory work.

#### Budget for 2022 and financial information

27. The CLC has provided its draft budget and the income and expenditure for the previous year.
28. Paragraph 104 of the first application explains key variances between its budget for 2021 and the actual income and expenditure received. We have also been provided with an explanation for variances between last year and the draft budget at Paragraph 110.

29. We are satisfied that the CLC has provides transparency to the regulated community about the allocation of the CLC's resources (including PCF income) and enables the LSB to be confident that the CLC has carefully and properly planned its financial position for the forthcoming year.

### Reserves and financial resilience

30. The first application confirms that over the last 4 years the CLC has operated at a deficit in order to reduce the level of reserves held. Its Council has updated and provided the LSB with a new reserves policy.
31. The CLC expects to hold cash reserves of £1,997,583 at the end of 2022. This will provide it with reserves that cover both its minimum reserve and market uncertainty reserve.
32. Significant reserves are also held in relation to CLC's Compensation Fund. CLC expects to hold £7,394,194 in this fund by the end of 2022. This is slightly below the total required reserves for that fund. However, CLC expects that when probable claims crystallise the reserves levels could be further bolstered.
33. The reserves policy (provided at Annex B to the first application) clearly articulates the risks mitigated through the reserves and confirms that the policy will be considered on an annual basis.

### Consultation and engagement

34. The CLC consulted on its proposed PCF, it also ran 3 webinars during the consultation period and promoted the consultation through PR and directly to its regulated community through newsletters and direct mail.
35. Our first decision notice set out our concerns in relation to consultation and engagement at Paragraphs 19-22. In summary:
- the consultation paper did not present any alternative options or approaches to achieve the desired outcomes and did not identify some of the key risks associated with the proposal (such as the potential unfairness of charging those who have not provided inadequate complaints handling, or potential disincentives to engage proactively with complaints handling or signposting)
  - the consultation achieved a low response rate (only five responses of which one was a duplicate), which is particularly concerning for a change that would have such a material impact
  - we are concerned that material issues raised through consultation have not been given sufficient consideration.
36. The LSB's concerns around consultation and engagement are somewhat addressed by the CLC's commitments in its second application to engage directly with firms on an ongoing basis as its new approach is implemented. However, we expect CLC to ensure that its approach to consultation and engagement is improved in future years – this should ensure that more firms engage with the process, and it should ensure that its consultation documents provide sufficient information to enable respondents to effectively engage with any proposals.

## Impact assessments

### *Equality Impact assessment*

37. The first application included a summary of the CLC's assessment of the impact of the level of the proposed PCF on legal services carried out by authorised persons, in particular those with protected characteristics. The CLC identified that practices with low turnovers would be disproportionately impacted by the banding changes and the OLC levy implementation.
38. Within the revised implementation plan in the second application the CLC explained at Paragraph 17 that around 152 Practices (69.4%) would see their regulatory costs increase by less than 16.72% (the average increase). Of the remaining 67 Practices (30.6%) 16 are practices with turnover of less than £100,000. The CLC has identified this as a one-off rebalancing of the minimum cost of practising associated with the change in methodology and the increase in OLC costs.
39. As a result of the disproportionate impact on small practices the CLC assessed the profile of those at the smallest practices. It provided a table of this assessment at Paragraph 142 of the first application. It did not identify that any groups of practitioners would be disproportionately impacted.
40. We consider that the CLC has provided meaningful consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession.
41. We are conscious that there was not updated assessment of impact provided for the amended proposals. This is somewhat mitigated by the CLC's proposed approach to data collection and planned direct engagement over the next year. We look forward to receiving CLC's initial EIA alongside next year's application.

## **Decision**

42. The LSB has approved the second application submitted by the CLC for 2021/22 under section 51 of the Act.

## **Summary of expectations for next application**

- the CLC to include a greater explanation of how it plans to measure and evaluate its activities, including its ongoing regulatory work
- the CLC to ensure that its approach to consultation and engagement is improved in future years – this should ensure that more firms engage with the process, and it should ensure that its consultation documents provide sufficient information to enable respondents to effectively engage with any proposals.