



Legal Services Board

Draft Amendments to the Practising Fee Rules for 2022 PCF collection

A response by
CILEx Regulation

8 October 2020

Introduction

1. This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing around 20,000 members and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.
2. CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.
3. CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the practice and entity rights, CILEx Regulation aims to capture a wider range of individuals and entities within its regulatory remit.
4. CILEx Fellows, CILEx Practitioners and CILEx Entities pay the annual practising fee (PCF) approved by the Legal Services Board (LSB).

General comments and observations on the consultation

5. The role of the CILEx Regulation Board is to oversee the work of CILEx Regulation and to ensure that the PCF and other income is used to ensure the protection of consumers and the public interest. In overseeing the formulation of the budget and its subsequent implementation, the CILEx Regulation Board has full regard to the better regulation principles and focuses on ensuring that the organisation remains financially resilient whilst keeping regulatory costs under tight control.
6. Hence, while CILEx Regulation is supportive of the LSB's intention to ensure that all the frontline regulators are operating in accordance with better regulation principles, we are concerned that the proposals as set out risk duplication of the role already performed by the Board. We are also concerned about potentially increased costs, due to the fact that the proposals are

prescriptive in their approach (e.g. prescribed forms and standardised approach to budget presentation, detailed guidance on how to use standard finance procedures, information on percentage variance to be investigated, mechanism for charging for shared services etc).

7. Moreover, the proposed requirement to generate funds for increasing reserves implies building a profit margin into the PCF to bring reserves to the minimum level, which is unlikely to command the support of the regulated community, especially in current circumstances.
8. Finally, the standardised approach does not appear to take account of the economies of scale that can be achieved through use of shared services or the additional costs that would be incurred through a tendering process to secure alternative providers of services.
9. CILEx Regulation suggests that the LSB might instead consider adopting an outcomes-focused approach to the assessment of the PCF. By agreeing the outcomes for the PCF process the LSB could ensure that proposals from regulators meet the requirements of better regulation principles, permitted purposes and the regulatory objectives whilst recognising existing governance and oversight arrangements, allowing each frontline regulator to demonstrate that it meets these outcomes in a way appropriate to the size and nature of its regulated community.

Responses to the questions from the consultation

Question 1: Do you have any comments on the above draft Rules 1 to 12? Do you have any comments on the associated Guidance?

10. These rules cover the definitions, legal framework and application procedure. No comments on rules/guidance for this section.

Question 2: Does the overarching criteria in draft Rule E13 adequately set out the LSB's expectations of Approved Regulators when considering a practising fee application? Are there other criteria which should be included? Do you have any comments on the associated draft Guidance?

11. The guidance provided in relation to proportionality indicates that there must be proactive engagement with the regulated community, showing them how the previous

year's PCF has been applied, as well as the anticipated v actual benefits of the implemented changes.

12. There will be instances where the PCF must be applied to activities which may not be supported by the regulated community but where we are collaborating with other stakeholders and require this activity to be funded, for example Legal Choices. It is unclear how such activities, required by wider stakeholders and approved by the CILEx Regulation Board which may not be supported by the profession, will operate successfully under the proposed form of accountability.

Question 3: Do you have any comments on draft Rules F14 to 16? Do you have any comments on the associated draft Guidance?

13. The guidance indicates that core regulatory activities do not need to be explained in detail. However, education and diversity are provided as examples of standalone projects that are not part of core regulation despite education being contained in section 51 and diversity being a regulatory objective.
14. It would be helpful to front-line regulators if the LSB could provide greater clarification as to the rationale for not considering these issues to be core regulatory functions as it is currently unclear whether only the day-to-day operations of the regulatory body (i.e. authorisation, supervision and enforcement) are considered to be core functions as opposed to the wider remit of regulatory responsibilities.
15. Clarification would also be helpful to understand the position relating to the proportion of the fee related to the cost of the regulatory body; is this assumed to be regulatory in nature or is the use of the term 'approved regulator' in rule 16 applicable to both bodies?

There is no question relating to rules 17-18: Financial Information

16. These rules mark a change from the existing approach where providing the stated information is only required for a PCF increase.
17. The LSB has been asked in earlier engagement meetings with the front-line regulators whether they will also provide 3 years of information and has stated that this is not their intention.
18. However, activities of the LSB have a direct and significant impact on the cost of the PCF charged to the regulated community, currently making up 4% of the charge for CILEx members. It is therefore essential that the Approved Regulator is able to

consider the levy for the LSB/OLC activities as part of their 3 year plan. CILEx Regulation would therefore ask the LSB to consider providing this information in the same format as is being required of the front-line regulators.

19. The proposed rule changes suggest that the Consumer Price Index (CPI) should apply to budgets for the next 3 years, it would be helpful to understand whether this also applies to the practising fee charged to the individual/entity and to understand whether this will be treated as an increase in the PCF.

20. It would be helpful if the LSB could provide greater detail on what it means by 'commercial income derived from permitted purposes'.

Question 4: Are draft rules H19 to 23 clear? Do you have other comments on these draft Rules or comments on the associated draft Guidance?

21. Following on from the previous question, further clarification is sought under the revised rules relating to reserves are accumulated by the Approved Regulator owing to 'commercial activities undertaken as a result of work under permitted purposes':

- Are these considered to be PCF or non-PCF reserves?
- If these amount to PCF reserves but are generated by the Approved Regulator (rather than the regulatory body), should the regulatory body (where it is a limited company) or the Approved Regulator hold/ have control of these reserves?
- Can these reserves only be used later for permitted purposes within the same category or are they able to be used for wider permitted purposes?

22. It is noted that to bring reserves to the suggested target of 3-6 months would involve drafting the CILEx/CILEx Regulation PCF budget to create a profit on the PCF in anticipation of potential future risks. This would represent significant cost to the profession, particularly in the short-term to medium-term while current reserves may have been depleted due to the extra costs arising from the COVID-19 pandemic and overall income may be stagnant or reducing.

23. CILEx Regulation would like greater clarity as to how the regulatory body identifies PCF/permitted purposes reserves. For example, application fee income is a permitted purpose, but application fees are not PCF income. As such, does application fee income constitute PCF or non-PCF reserves?

24. One final point, CRL does not currently charge for the regulation of lower grades of membership as this is included as part of the PCF charged to the regulated community under the permitted purposes set out in section 51 of the Legal Services Act. If CILEx Regulation began to charge for this service how would the resulting income be classified; would this be PCF or non-PCF income and how would this be held in terms of reserves at the regulatory body?

Question 5: Do you have any comments on draft Rules I 24 and 25? Do you have any comments on the associated draft Guidance?

25. CILEx Regulation questions whether it will be possible to provide sufficient detail on the PCF budget in all situations to make the consultation meaningful to the regulated community. This is particularly in light of the interests of other stakeholders who may require the Approved Regulator and regulatory body to pursue priorities which may not be supported by the regulated community.

26. It is difficult to envisage a situation where the consultation remains meaningful while activities are carried out on projects funded by the regulated community from which they may not perceive the benefits. The proposal invites responses to a fee for which the regulated community is not a direct beneficiary, and for which the Approved Regulator and regulatory body are encouraged spend on external activities. This may reduce confidence in the integrity of the consultation and engagement process if commentary on expenditure from the regulated community cannot be acted upon.

27. It should be noted that the overwhelming majority of the work undertaken by the front-line regulators relates to day-to-day regulatory activities (as defined in section 51 (4)(a) the permitted purposes and/or regulatory objectives) and there are few projects which are funded that would fall outside of this work (however the examples provided in the consultation seems to more narrowly define the day to day activities of the regulator).

28. It would be helpful to understand what the LSB defines as core regulatory functions and those which would be subject to increased scrutiny, beyond the education and diversity examples provided in the consultation, which on the face of the Act appear to be considered to be regulatory functions.

29. There are clear benefits to the provision of a 3 year costed business plan, however the prescription surrounding the format for submission is likely to require additional resource and therefore is likely to increase the costs to the regulator in preparation and submission of future PCF applications and CILEx Regulation has governance

processes in place through the oversight of the CILEx Regulation Board which ensure that the budgeting process is prudent and financially resilient.

30. Assuming that the rules are implemented in December 2020, CILEx Regulation seeks clarification as to whether the 3 year costed business plan will apply to both the Approved Regulator (in relation to its permitted purposes work or projects in which part of the work is a permitted purpose) as well as the regulatory body. We would also like to understand which elements of the Approved Regulator's budget would be required to be submitted as a 3 year plan, as there are elements of the CILEx budget which do not relate to the permitted purposes. However, this may increase the complexity of the analysis of the PCF application and may require additional, financially-qualified, LSB resource to assess the merits of the application.
31. The indication from the engagement meetings CILEx Regulation has attended with the LSB, is that in future there should be increased engagement with the regulated community on the practising fee beyond the annual consultations with the regulated community. It would be helpful to have greater clarity from the LSB as to additional engagement that is anticipated.

Question 6: Are Rules J 26 to 30 regarding initial and full impact assessments clear? Do you have any comments on the associated draft Guidance?

32. No comments.

Question 7: Does the criterion set out at draft Rule K 31 adequately explain the matters which the LSB requires to be satisfied to approve a practising fee application? Are you content that the Rule on the interim collection of practising fees has been omitted from the draft Rules? Do you have any comments on draft Rules K 32 and 33?

33. The removal of the interim fee collection as an option was not supported by CILEx Regulation in the initial engagement sessions on changes to the PCF.
34. At present the reserves held by CILEx Regulation would not be sufficient to meet a prolonged period when the PCF could not be invoiced and therefore CILEx Regulation would have to make a section 30 request to CILEx. Whilst the LSB has set out other options for funding the PCF in the interim period, it seems counterintuitive to remove the interim collection option. CRL would support the reintroduction of this as one of a range of options.

35. Related to the above point, if the possibility to utilise the interim PCF option is removed, then to ensure adequate time for preparation, submission and discussion of the annual practising fee application and related CILEx Regulation and CILEx budgets, work on the budget will have to commence up to 18 months prior to the fee taking effect. This will have an impact on the accuracy and completeness of budgets being submitted owing to the time delay between preparation and implementation.
36. Any questions relating to this consultation response can be directed to Vicky Purtil, Director of Authorisation and Supervision, (victoria.purtill@cilexregulation.org.uk).