



Review of Licence and Practice Fee Arrangements
CLC Consultation Paper
May 2013

Submission Deadline: 21 June 2013

Responding to this Consultation

1. You are invited to respond to the question at page 8. The CLC also welcomes comments on the proposals as a whole including alternative proposals to achieve the policy objectives outlined in this Consultation Paper.
2. When you respond could you please give your name and address and whether you are a licensed conveyancer. If you are not a licensed conveyancer, 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.
3. All responses should be send by email to consultations@clc-uk.org or by post to

The Council for Licensed Conveyancers
16 Glebe Road
Chelmsford
Essex CM1 1QG

Or by to DX 121925 CHELMSFORD 6

Submission Deadline: 21 June 2013

Introduction

Statutory Framework

4. The CLC was established by the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers in the provision of conveyancing services. With effect from November 2008 the CLC has regulated probate services (which includes the administration of estates). It has no representative function. It was the first Approved Regulator to be designated as a Licensing Authority authorised to license Alternative Business Structures from October 2011.
5. 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 as follows:
 - a. Protecting and promoting the public interest;
 - b. Supporting the constitutional principle of the rule of law;
 - c. Improving access to justice;
 - d. Protecting and promoting the interests of consumers;
 - e. Promoting competition in the provision of services by ‘authorised persons’²;
 - f. Encouraging an independent, strong, diverse and effective legal profession;
 - g. Increasing public understanding of the citizen’s legal rights and duties;
 - h. Promoting and maintaining adherence to the professional principles³.
7. The “professional principles” are—
 - (a) that authorised persons should act with independence and integrity,
 - (b) that authorised persons should maintain proper standards of work,
 - (c) that authorised persons should act in the best interests of their clients,
 - (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
 - (e) that the affairs of clients should be kept confidential.⁴

¹ S.28(2) LSA 2007

² defined at s.18 LSA

³ s.1(1) LSA

⁴ s.1(3) LSA

8. The CLC is also required to “have regard to...the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”⁵.

CLC’s Approach to Regulation

9. As set out in the CLC’s Corporate Strategy for 2009-2014 the CLC’s role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
10. The CLC fulfills its responsibilities by undertaking a range of activities:
- Set educational and training standards for entry to the profession;
 - Issue licences to practise to those qualified to provide conveyancing and probate services to consumers;
 - Maintain a register of all Licensed Conveyancers and approved Regulated Entities;
 - Set standards to regulate the professional practice, conduct and discipline of Licensed Conveyancers and Regulated Entities;
 - Set standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers;
 - Monitor the work and conduct of Regulated Entities and to determine whether they are meeting the required standards.
 - Provide guidance and advice to Regulated Entities to maintain compliance with the standards and those regulations relevant to our duty of consumer protection;
 - Investigate allegations of misconduct against a Licensed Conveyancer, Manager and/or Regulated Entity and where appropriate take disciplinary proceedings;
 - Collaborate with key stakeholders in the legal services market to monitor and shape the impact of proposed regulations on the conduct of Licensed Conveyancers and Regulated Entities in order to maintain adequate consumer protection.

Fee Approval Process

11. Under s.51(5) LSA 2007 “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 Schedule 1).
12. The Submission Deadline for this Consultation is 21 June 2013. 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 2013.
13. 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 2013, 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 2013.

⁵ s.28(3) LSA

Current Funding Arrangements for the CLC

14. 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:

- 1) The same licence fee payable by all licensed conveyancers
- 2) A Practice Fee payable by all CLC Regulated Entities (determined as a percentage of turnover with bandings)
- 3) 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 income 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. As explained at paragraph 13 above, an application is then made to the LSB to approve the Fees Rules made by the Council.

Regulatory Fees

15. The CLC recognises that its obligations under the LSA require it more explicitly to adopt a regulatory approach which increasingly shifts the focus of its regulatory activities to the 'regulated entity'. Consequently the regulatory fees required to enable the delivery of the CLC's responsibilities need to reflect more closely the costs attributable to the regulation of individual licence holders and regulated entities. Otherwise there is a risk that the burden of regulatory costs may fall unfairly on some members of the regulated community.

Emerging Views

16. In its Fees Consultation Paper of February 2010 the view expressed was that the Practices with higher levels of turnover proportionately pay more than Practices with lower levels of turnover and that the CLC's preferred position should be that each Practice makes a contribution to the costs of the CLC directly in proportion to the level of regulatory supervision required for each Practice and more generally for the risk of default each Practice poses.

17. In its 2010 application to the LSB for approval of its Practising Fee proposals the CLC said

The CLC has taken account of the different challenges of the various parts of its regulated population and of those they service and whilst no formal assessment has been undertaken has sought to take a balanced view. The CLC has reached no concluded view as to the fairest way of determining how the regulatory costs across the profession should be distributed. It may be that continuing to determine charges on the basis of turnover is the most appropriate. However, it will investigate whether other models of charging present a more equitable scheme.

18. To a great extent, that remains the CLC's position. It has carried out a number of investigations into how it could modify the way in which regulatory fees are calculated based on the time spent by the CLC in supervising

individual practices or by its assessment into the risks evidenced by particular practices or types of practice. However, whilst the CLC continues to work and test different models, to date none of them have yet evidenced a robustness which the Council is satisfied will ensure they are accepted by the CLC's paying community.

19. In particular the CLC is not yet satisfied that any of the models have been developed to such a stage that they meet the better regulation requirement to be transparent, accountable, proportionate, consistent and targeted.

Setting the regulatory fees for 2013-2014

20. Since we shall not be able to move towards a new regulatory fee structure we intend to set regulatory fees applying the model which has been in force since 1 November 2010:

- 1) Licence fee payable by individuals – though there may be some variation from the current fee charged of £400
- 2) Practice Fee payable by entities licensed by the CLC – based on turnover. The current intention is to continue to apply the bandings used since 1 November 2010

Turnover £		Banding
From	To	
0	100,000	110% Base Rate
100,001	500,000	Base Rate
500,001	3,000,000	80% Base Rate
3,000,000	and over	70% Base Rate

- 3) Compensation Fund contributions payable by entities licensed by the CLC – based on turnover. The current intention is to continue to apply the bandings used since 1 November 2010 (set out above)

21. Until it has determined its expenditure budget for the year commencing 1 January 2014 (expected by August 2013), the CLC will not be in a position to decide the exact level of fees payable from 1 November 2013 (subject to LSB approval).

22. The factors the CLC will take account in determining the level of fees will remain the same as in previous years

- 1) All CLC's expenditure is applied for Permitted Purposes (as required by rule 6 LSB Practising Fee Rules 2009 – see Schedule 1) and in accordance with the Regulatory Objectives
- 2) The income requirement is equal to budgeted expenditure including the levy payable by the CLC towards the costs of the LSB and the Legal Ombudsman (ie there is no surplus or deficit of income over expenditure)
- 3) The level of reserves for both Operations and the Compensation Fund are in line with the CLC's Reserves Policy
- 4) Paragraph 1 of CLC Compensation Fund Operating Framework expressly reserves to the CLC the right to make a specific levy

23. The CLC anticipates that the actual fees it will charge will be broadly in line with the fees charged in the current licence year (and set out in the CLC Fees Framework 2012):

- the same licence fee (currently £400) is payable by all individual licensees
- CLC entities pay a Practice Fee based on turnover determined as follows

Turnover Banding			Practice Fee payable				
			Minimum Fee in Band				
Between	0 and	£100,000	£1,070	or	1.5%	of Turnover	Whichever is the greater
			Minimum Fee in Band			Turnover in excess of	
Between	£100,001 and	£500,000	£1,500	plus	1.4%	£100,000	
Between	£500,001 and	£3,000,000	£7,100	plus	1.2%	£500,000	
Over	£3,000,000		£37,100	plus	1.1%	£3,000,000	

- Compensation Fund contribution payable by each CLC Practice remains at 0.4% of turnover applying the current tiers as follows:

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	0.4%	£100,000
Between	£500,001 and	£3,000,000	£2,100	plus	0.3%	£500,000
Over	£3,000,000		£9,600	plus	0.2%	£3,000,000

- other fees are payable as set out in the CLC Fees Framework 2012.

24. The Information provided to CLC licensees in September 2012 is at Schedule 2. Notification of the fees payable for the licence year starting 1 November 2013 as approved by the LSB will be published in September 2013.

Question

1. Taking account of the information in Schedule 2, please comment on the fee structure and process for determining the Regulatory Fees payable for the licence year starting on 1 November 2013.

Schedule 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];
- (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.

Schedule 2
Information to the profession
CLC regulatory charges
2012-2013

1. This notification sets out the CLC's determination about:
 - The licence and practice fee structure and the way in which Compensation Fund contributions payable by licence holders will be applied; and
 - the licence and practice fees and the contribution the CLC has determined are payable for the licence year starting on 1 November 2012.

The CLC's licence and practice fee structure, and contributions to the CLC's Compensation Fund

2. The CLC consulted with the profession in February 2010 about changes to the way in which it proposed to charge the profession. Those changes were introduced with effect from 1 November 2010 and provided in summary that:
 - all licensed conveyancers should pay the same licence fee of £400 (as against the previous arrangement position where Managers paid £880 and employed licensed conveyancers pay £480). This underlines the fact that licensed conveyancers whether Managers or in employment are equally qualified to provide the legal services they are licensed to provide. It also reflects the fact that the costs of regulating licensed conveyancers are broadly the same.
 - CLC regulated practices should pay a Practice Fee to meet the costs incurred by the CLC in regulating entities.
 - the Compensation Fund contribution should be set at a level which meets the costs of grants and the direct costs of the maintenance, management and administration of the Compensation Fund, rather than the broader function of protecting the fund which in the view of the CLC is one of the most important outcomes of regulating CLC regulated practices. These costs are now be met by the Practice Fee.

Licence and Practice Fee and Compensation Fund contributions payable for year starting 1 November 2012

3. The CLC Fees Framework 2012 is at Annex 1.
4. The CLC has determined that for the year commencing 1 November 2012:
 - Licence Fees payable by licensed conveyancers remain unchanged at £400;
 - the Base Rate Practice Fee payable by each CLC Practice is increased marginally from 1.3% to 1.4% of turnover with Fees applying the current tiers set out in the CLC Fees Framework 2012

(the minimum Practice Fee payable is increased in the same proportion as the increase in the rate payable for £0-100,000 turnover band);

- the Base Rate of the Compensation Fund contribution payable by each CLC Practice remains at 0.4% of turnover applying the current tiers set out in the CLC Fees Framework 2012;
 - the other fees levied by the CLC remain unchanged (as set out at paragraph 13).
5. Examples of the effect the changes in the Practice Fee rates and Compensation Fund contributions will have on practices are set out at Annex 2.
 6. The CLC's ambition continues, subject to annual review, to be to reduce the regulatory costs as a percentage of turnover payable by CLC regulated practices. The CLC was successful in its application to be designated a licensing authority regulating Alternative Business Structures. The LSB refused its application to regulate advocacy and litigation services in April 2012 on the grounds that the CLC lacked the legal power to make rules and regulations that would allow it to authorise entities for these activities and failed to demonstrate an appropriate understanding of the specific risks of the new activities. The CLC will address these concerns before resubmitting its application to regulate litigation and advocacy services. Clearly, one of the outcomes of the planned extension in regulatory scope is an increase in turnover of the regulated population. It also anticipates that the CLC's contribution to the costs of the Legal Service Board and of the Office for Legal Complaints (which continue to account for a significant percentage of the CLC's total regulatory costs) show a downward trend over the next two to three years.
 7. The CLC's Corporate Strategy 2011-2013 and its Business Plan 2012⁶ are determined by the regulatory objectives, and is consistent with the approach developed by the Legal Services Board. Annex 3 compares the audited expenditure for 2011, the expenditure budget for 2012, the forecast outturn for 2012 and the provisional expenditure budget for 2013. The comments explain the variances between the expenditure budget for 2012 and the forecast outturn for 2012. The changes shown in percentage and monetary terms compare the expenditure budget for 2012 with the forecast outturn for 2012.
 8. The budgeted total funding requirement for 2013 is £2,432,850. It is estimated that setting the Practice Fee at 1.4% (as determined by Council) will generate an income of £1,408,000 based on the turnover of those practices currently regulated by the CLC. Taken with the Licence Fee Income and Other income there will be a total budgeted income of £2,339,000, leading to a budgeted shortfall of income against expenditure of £93,850. The shortfall will be funded from reserves.

⁶ Accessible under About Us at www.clc-uk.org

Operations	
	1.4% current
Practice Fee	1,408,000
Licence Fee	514,000
Other Income	417,000
Total Income	2,339,000
Total Funding Req	<u>2,432,850</u>
Surplus(shortfall)	(93,850)

9. The net result is a budgeted reduction in the CLC's Reserves on Operations though the CLC is satisfied that the level of reserves at the end of 2013 will be the equivalent of 6-7 months expenditure, well within the parameters set by the CLC Council.
10. The shortfall between the total funding requirements of the Compensation Fund against the budgeted total income will also be met from reserves.

Compensation Fund	
	0.4 current
	£000s
Contribution	396,000
Other Income	240,000
Total Income	636,000
Total Funding Req	<u>935,500</u>
Surplus(shortfall)	(299,500)

11. The net result is a reduction in the CLC's Reserves on the CLC's Compensation Fund. The CLC is satisfied that the level of reserves (after this reduction which it currently estimates to be £2.2 million at the end of 2013) will be sufficient to meet the expectations of, and provide confidence to, clients, as well as the mortgage lenders. The level of reserves required is calculated annually and a minimum level of £2,000,000 in reserves was set for 2010.
12. The CLC is continuing to review its fee structure. Assuming significant progress is made, it is likely that the CLC will be consulting on draft proposals in the first half of 2013.
13. The other Fees chargeable are as follows:

		Fee	Paragraph	Regulatory Arrangements
1.	Probate Licence	£75	3(a)(ii)	Licensed Conveyancer – Licensing Framework
2.	First Manager Licence	£150		
3.	Duplicate licence	£50	17 & 25	Licensed Conveyancer –

				Licensing Framework
4.	Amendment to licence	£75	27	Licensed Conveyancer – Licensing Framework
5.	Failure to submit Accountant's Report in time	£100	16.2	Accounts Code and Guidance

Annex 1



The CLC Fees Framework 2012

Made 2012 by the Council for Licensed Conveyancers with the approval of the Legal Services Board in accordance with s.14, 32 and 38 Administration of Justice Act 1985 and s.51 Legal Services Act 2007.

CITATION, COMMENCEMENT AND REVOCATION

1. This Framework may be cited as the CLC Fees Framework 2012 and shall come into force on 1 November 2012 on which date the Council for Licensed Conveyancers' Fees Rules 2011 shall cease to have effect.
2. "CLC Body" is a Recognised Body or a Licensed Body regulated by the CLC.

LICENSED CONVEYANCERS

3. The fees payable as provided by the CLC Licensed Conveyancers – Licensing Framework shall be as follows: -
 - (1) under paragraph 3(a)(ii) for the issue of a licence:
for the first time, or where such a licence is not in force at the time of the application (and has not been in force for at least 12 months prior to that date): £150;
to provide Conveyancing Services: £400
to provide Probate Services: £75;
 - (2) under paragraph 17 and 25 for an amendment to a licence: £75;
 - (3) under paragraph 27 for a duplicate licence, where chargeable: £50.
4. The additional fee of £100 is payable for failure to submit an Accountant's Report within the time limited (see paragraph 16.2 of the Accounts Code and Guidance).

CLC BODIES

Practice Fee

5. The fee payable by a CLC Body as provided by

- (1) paragraph 5(a)(ii) of the CLC Recognised Bodies – Recognition Framework; and
- (2) paragraph 7.10 of the CLC Licensed Body (ABS) Licensing Framework

shall be the turnover declared by the CLC Body for the purpose of determining the applicable annual premium payable in accordance with 10.1 of the CLC Professional Indemnity Insurance Code & Guidance as follows:

Turnover Banding			Practice Fee payable				
			Minimum Fee in Band				
Between	0 and	£100,000	£1,070	or	1.5%	Of Turnover	Whichever is the greater
			Minimum Fee in Band			Turnover in excess of	
Between	£100,001 and	£500,000	£1,500	plus	1.4%	£100,000	
Between	£500,001 and	£3,000,000	£7,100	plus	1.2%	£500,000	
Over	£3,000,000		£37,100	plus	1.1%	£3,000,000	

Compensation Fund Contribution

6. The Compensation Fund contribution payable by a CLC Body as provided by
 - (1) paragraph 5(a)(iv) of the CLC Recognised Bodies – Recognition Framework; and
 - (2) paragraph 7.11 of the CLC Licensed Body (ABS) Licensing Framework

shall be the turnover declared by the CLC Body for the purpose of determining the applicable annual premium payable in accordance with paragraph 10.1 of the CLC Professional Indemnity Insurance Code & Guidance as follows:

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	0.4%	£100,000
Between	£500,001 and	£3,000,000	£2,100	plus	0.3%	£500,000
Over	£3,000,000		£9,600	plus	0.2%	£3,000,000

WAIVER

7. The CLC may in writing waive or vary any of the provisions of this Framework and may revoke any waiver in any particular case.

Annex 2
Effect of change in Regulatory Charges

Practice Fee

	Current	Proposed	Increase
PF 1.4% & CF 0.4%			
	PF	PF	as % of
Turnover	Base 1.3%	Base 1.4%	current
30,000	1,000	1,070	107
50,000	1,000	1,070	107
150,000	2,050	2,200	107
550,000	7,150	7,700	108
1,500,000	17,600	19,100	109
3,500,000	39,100	42,600	109
15,000,000	154,100	163,700	106

Compensation Fund Contribution

	Current	Proposed	
	CF	CF	as % of
Turnover	Base 0.4%	Base 0.4%	current
30,000	500	500	100
50,000	500	500	100
150,000	700	700	100
550,000	2,250	2,250	100
1,500,000	5,100	5,100	100
3,500,000	10,600	10,600	100
15,000,000	33,600	33,600	100

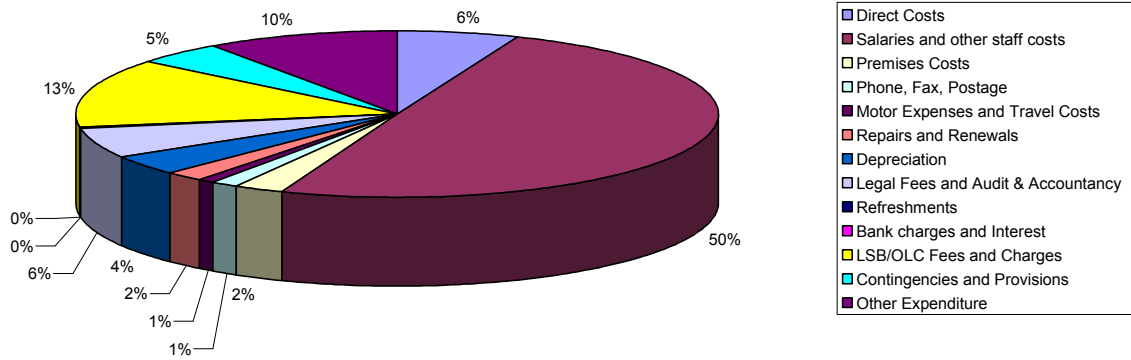
Total

	Current	Proposed	as % of
	Total	Total	current
Turnover			
30,000	1,500	1,570	105
50,000	1,500	1,570	105
150,000	2,750	2,900	105
550,000	9,400	9,950	106
1,500,000	22,700	24,200	107
3,500,000	49,700	53,200	107
15,000,000	187,700	197,300	105

**Annex 3
CLC Spend 2012 Budgeted v Forecast**

	Actuals	Original Budget	Forecast Full Year	Variance between Original Budget 2012 and Forecast for Full Year 2012	Budget	Percentage Variance Original Budget 2012 and Forecast Full Year 2012	Commentary
	2011	2012	2012		2013		
EXPENDITURE							
Direct Costs	113,773	158,700	90,000	68,700	110,500	43	costs incurred reflect reduction in number of students registered and in efficiency savings
Other Expenditure							
Salaries and other staff costs	1,149,054	1,266,400	1,170,000	96,400	1,374,850	8	staff vacancies
Premises Costs	47,323	58,000	53,529	4,471	53,000	8	
Phone, Fax, Postage	29,207	36,000	24,735	11,265	26,000	31	efficiency savings, particularly increased use of electronic communication and proportionate decrease in postal services
Motor Expenses and Travel Costs	18,062	25,200	17,728	7,472	22,000	30	efficiency savings
Repairs and Renewals	47,068	51,000	70,076	(19,076)	56,000	(37)	IT costs higher than anticipated, CLC offices redecorated
Depreciation	81,937	100,000	69,722	30,278	110,000	30	
Legal Fees and Audit & Accountancy	143,844	144,000				(35)	includes research costs not included in the Original Budget
Legal Fees			170,000	(50,000)	100,000		
Audit & Accountancy			24,000	0	25,500		
Refreshments	2,501	2,000	782	1,218	1,200	61	
Bank charges and Interest	16,971	5,000	18,000	(13,000)	20,000	(260)	not in direct control of CLC forecast in line with CLC's current spend
LSB/OLC Fees and Charges	251,112	340,000	268,400	71,600	269,000	21	not in direct control of CLC
Contingencies and Provisions	81,234	116,000	20,000	96,000	30,000	83	
Other Expenditure	194,992	246,000	235,638	10,362	235,000	4	
TOTAL EXPENDITURE	2,177,078	2,548,300	2,232,610	315,690	2,432,850	12	
Exceptional Costs (not included above) relating to CEO Office			358,000	(358,000)			
TOTAL EXPENDITURE (including Exceptional Costs)			2,590,610	(42,310)			

CLC Expenditure Original Budget 2012



CLC Expenditure Budget 2013

