

REVIEW OF THE CLC'S REGULATORY FEE ARRANGEMENTS

Summary of Consultation Responses

August 2019

Introduction

Between 9 May and 21 June 2019 (six weeks) the CLC consulted on its review of its Licence and Practice Fee Arrangements (including proposed changes to the CLC's Compensation Fund contributions).

Five responses were received to the CLC's Fees Consultation Paper, four from CLC practices and one from the Society of Licensed Conveyancers (SLC), a representative body for licensed conveyancers and other property lawyers.

Summary of Comments Received and the CLC's Responses

The respondents agreed the objectives for determining fee rates. With some caution, the turnover growth assumption of 3% pa for practices under CLC regulation was considered reasonable. On the basis of the growth assumption the CLC anticipates that both its Practice Fund and Compensation Fund will move back into surplus within five years (ie by 2025), the deficit in the intervening period will be funded by a reduction in the CLC's current reserves.

The respondents agreed the objectives for determining fee rates. With some caution, the turnover growth assumption of 3% pa for practices under CLC regulation was considered reasonable. The CLC analysis indicates that the 3% was unnecessarily conservative and opted for a higher rate in the final model. On the basis of the growth assumption the CLC anticipates that the deficit on its Practice Fund will reduce over the next three years and that it break even within five years (ie by 2025). The deficit in the intervening period will be funded by a managed reduction in the CLC's current reserves.

One respondent suggested that the CLC should review the fee bandings for the different rates of charge. The CLC keeps the range and number of fee bandings under regular review. Any proposed change to the fee banding will be subject to consultation.

The Society of Licensed Conveyancers suggested that the CLC should prepare a financial summary of the cost of regulation. All legal regulators publish details of their regulatory fees. It is not the CLC's role to make comparisons about the cost of regulation. Practices have different drivers (cost being a subsidiary factor) in determining by which legal regulator they choose to be regulated.

Respondents to the Consultation

Those responding to the Consultation (whose responses are set out below) were:

1. Society of Licensed Conveyancers
2. DC law
3. NFL Legal Ltd
4. John M Lewis
5. Enact Conveyancing

Response from the Society of Licensed Conveyancers

Questions

1. Do you have any comments on the objectives for determining fee rates set out at paragraph 20?

The SLC considers all of the points listed to be fair and reasonable. Fee fluctuations should be reasonably avoided and adequate reserves maintained to safeguard against a modest downturn in the economy without the need to increase fees.

2. Do you have any comments on the factors which are likely to impact fee rates set out at paragraph 22?

The SLC considers that the factors that you have specified as likely to impact the fee rates are appropriate. We agree that the fee should be based on the turnover of the last year unless there are any exceptional circumstances. An assumption of 3% growth sounds very achievable though we are conscious of your comments in (d) that there has been a downward trend in transaction volumes over the last 36 months and is this growth sustainable? The lower the practice fees the more attractive CLC regulation becomes and the more firms may switch regulators. Has the CLC discussed the fee reductions with the SRA regulated firms that have expressed an interest in switching regulators but have not yet done so? If so, has the result of those discussions been computed to try to establish a price 'tipping' point?

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 2019?

The SLC is very supportive of a fee reduction and would commend the prudence of the CLC. However running at a significant deficit would result in the need for the CLC to significantly increase fees in the future, once the excess reserves have been exhausted. Significant fee fluctuations should be avoided and a steady adjustment would be preferred. The SLC hopes that existing CLC firms will continue to grow and that other conveyancing firms transfer to CLC regulation, which will increase the total fees collected by the CLC. Ideally the CLC would have an achievable plan that enables the new, lower fees to be maintained through growth of the CLC profession so that any initial deficit is removed by increased revenue. The marginal cost of regulating this growth must be less than the additional fees raised in order to off set the deficit. Given the economic uncertainty and also the risk of claims associated with leasehold miss-selling etc, have the CLC considered whether it would be prudent to increase the minimum reserves level?

The SRA are reducing their compensation fund contributions too.

<https://insideconveyancing.co.uk/news/compensation-fund-contributions-are-set-to-fall-next-year/>.

We would encourage the CLC prepare a financial summary of the cost of regulation by both the CLC and the SRA for typical small, medium and large firms for ease of a financial comparison. The total cost of being regulated by the CLC needs to be competitive and if it is favourable then it could be used as a marketing tool to help encourage conveyancing firms to switch regulators.

Response from DC Law

Our replies to the consultation is as follows:

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We consider all of the points listed to be fair and reasonable. Fee fluctuations should be reasonably avoided and adequate reserves maintained to safeguard against a modest downturn in the economy without the need to increase fees.

2. Do you have any comments on the factors which are likely to impact fee rates set out at paragraph 22?

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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 2019?

We are very supportive of a fee reduction and would commend the prudence of the CLC. However running at a significant deficit would result in the need for the CLC to significantly increase fees in the future, once the excess reserves have been exhausted. Significant fee fluctuations should be avoided and a steady adjustment would be preferred. We hope that existing CLC firms will continue to grow and that other conveyancing firms transfer to CLC regulation, which will increase the total fees collected by the CLC. Ideally the CLC would have an achievable plan that enables the new, lower fees to be maintained through growth of the CLC profession so that any initial deficit is removed by increased revenue. The marginal cost of regulating this growth must be less than the additional fees raised in order to off set the deficit. Given the economic uncertainty and also the risk of claims associated with leasehold miss-selling etc, have the CLC considered whether it would be prudent to increase the minimum reserves level?

Response from NFL Legal Ltd

Our firm is in agreement with the proposals put forward in the Consultation Paper , and the specific responses to your Questions are as follows:-

1. The objectives for determining the fee rates set out in paragraph 20 are accepted.
2. The CLC comments with regards to the factors likely to impact on the fee rate structure as set out in paragraph 22 are noted.

This is a time of uncertainty in the conveyancing market and wider economy and whether growth figures in turnover of 3% are likely will only be seen in hindsight , and certainly a prudent approach is required by the CLC in judging the sustainability of the reduction in fee scales to avoid future “peaks and troughs” balancing of fees. . It goes without saying that a fully funded reduction would be agreeable.

3. With regards to the existing fee structure, there does seem to be a disparity in the proportions of fees charged to both the Practice Fee and Compensation fund fees payable, particularly in the fee income turnover range of between £1m and £2m, where in both instances the increase of fees between the bandings is more than 100% , whereas this tails off proportionately as the fee income scale rises. We consider that this may impact on the small to medium sized practices unfairly, and that the fee scales should increase more evenly across the turnover scale.

Response from John M Lewis

Please see my response to your consultation questions regarding the above as follows:-

- 1 No.
- 2 No.
- 3 Consideration could perhaps be given to benefitting firms who have not had to make a claim on the Compensation Funds and penalising those that have so that firms with a better claim record can benefit from lower fees, similar to indemnity insurance premiums.

Response from enact Conveyancing

We thank the CLC for producing this consultation and support any affordable change to Licence Fees provided the new rates are applied on an equitable basis.

I set out below observations which are not intended to result in the CLC changing their proposed course of action.

1. Do you have any comments on the objectives for determining fee rates set out at paragraph 20?

20c – If the expectation is fee rates will reduce as economies of scale are realised, will the reality not be fees charged will not be consistent as they will reduce !

20c - Whilst the overriding objective should be not to increase fee rates, the qualification “ exceptional circumstances “ may be quite difficult in practice to apply as minimum reserves may have to be reset at a higher level in the future for other reasons which may not be deemed exceptional.

2. Do you have any comments on the factors which are likely to impact fee rates set out at paragraph 22?

22a –Anecdotal evidence suggests some firms are struggling and reality has hit home for one notable SRA ABS practice, who has recently shut their transactional conveyancing arm as the long term benefits of external investment are not deemed to meet their investment objectives. Not clear that 3% will actually be achieved.

22e – Not sure that there is a direct correlation between fee rates and practices switching regulator as I would hope that the reasons for switching were not simply based on price.

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 2019?

No other comments.