

Costs Lawyer Standards Board

Application to the Legal Services Board for approval of Costs Lawyer Practising Certificate Fee 2017

1. Application

This application is made by the Costs Lawyer Standards Board (CLSB) under S.51 of the Legal Services Act 2007 (LSA) and Practising Fee Rules 2009 for Legal Services Board (LSB) approval of the Costs Lawyer practising certificate fee for 2017 (PCF 2017).

2. Enclosures with this application

- (i) Consultation paper
- (ii) Consultation response report
- (iii) CLSB budget for 2017
- (iv) CLSB abbreviated accounts 2015

3. Independence

The CLSB has undertaken the role of approved regulator under the delegated authority of the Association of Costs Lawyers (ACL) since 31 October 2011. The fee for a Costs Lawyer practising certificate and the fee for membership of the ACL (the profession's representative body) were separated for practising year 2013 onwards.

The CLSB has its own board, strategy, business plan and governance structure (Costs Lawyer Handbook and CLSB Operations Manual) and sets its own budget without influence of the ACL. The CLSB states on its annual fee note that the ACL will bill separately for its 2017 membership fee and that it is not a requirement that a Costs Lawyer with a practising certificate issued by the CLSB is an ACL member.

The Costs Lawyer practising certificate fee history since 2012 has been as follows:

| Year | PCF | Notes |
|-------------|------------|--|
| 2012 | £450.00 | One fee, apportioned £250 to CLSB and £200 to ACL |
| 2013 | £250.00 | Fee for practising certificate and ACL membership separated |
| 2014 | £250.00 | Fee for practising certificate through the CLSB only |
| 2015 | £250.00 | Fee for practising certificate through the CLSB only |
| 2016 | £250.00 | Fee for practising certificate through the CLSB only |
| 2017 | £250.00 | <i>Proposed fee for practising certificate through the CLSB only</i> |

4. Proposed PCF 2017

The proposed PCF 2017 was determined by the CLSB board on 12 July 2015 following consideration of the cost of regulatory and permitted purposes activity during previous years, anticipated spend for 2017, current reserves and uncertainty for the future due to electronic bills of costs and a likely increase in fixed fees. The CLSB considers the PCF 2017 to be proportionate and fair in all the circumstances. Further, it complies with the Regulators Code in that by remaining reasonable, it supports small business growth (the profession has a high number of sole practitioners and small firms).

5. CLSB income for 2017

The PCF 2017 is the only form of income for the CLSB. For the purposes of this application the CLSB has worked on the basis of 632 authorised and regulated Costs Lawyers in 2017, the figure that CLSB regulated on 1 April 2016.

The PCF 2017 will allow the CLSB to achieve the following regulatory objectives:

- (a) Protect and promote the public interest.
- (b) Support the constitutional principle of the rule of law.
- (c) Improve access to justice.
- (d) Protect and promote the interests of consumers.
- (e) Promote competition in the provision of services.
- (f) Encourage an independent, strong, diverse and effective legal profession.
- (g) Increase public understanding of the citizen's legal rights and duties.
- (h) Promote and maintain adherence to the following professional principles in that:
 - (i) authorised persons should act with independence and integrity; and
 - (ii) authorised persons should maintain proper standards of work; and
 - (iii) authorised persons should act in the best interests of their clients; and
 - (iv) 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
 - (v) the affairs of clients should be kept confidential.

The PCF 2017 will also enable the CLSB to meet its objectives as set out in detail under its 2017 business plan. These objectives include, inter alia:

- Setting and maintaining professional standards within the profession through defined rules and regulations.
- Complaint management through defined disciplinary processes and procedures.
- Managing risks (consumer, profession & business).
- Gathering, analysing and publishing statistical information about the profession.
- Continuing to consider options on entity regulation.
- Managing the mark of regulation under licence.

- Managing the accreditation of Costs Lawyers for the purposes of providing CPD.
- Random auditing of CPD records.
- Increasing awareness on the difference between a Costs Lawyer with a practising certificate and Law Costs Draftsmen/Costs Draftsmen.
- Auditing provision of the Costs Lawyer qualification by the CLSB accredited study provider.
- Communicating via the CLSB website, newsletters, Costs Lawyer Journal, two annual National Conferences.
- Engaging with other regulators and interested parties e.g. the LSB, LeO and the ACL.

6. The Costs Lawyer practising certificate

The PCF 2017 will cover the period 1 January 2017 to 31 December 2017 inclusive. A Costs Lawyer with a 2017 practising certificate issued by the CLSB will be authorised to undertake the following reserved legal activities during that period:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths

7. Practising fee rules 2009

C.5: Permitted purposes

All monies raised by the CLSB through the PCF 2017 will be used for permitted purposes only. Separation of CLSB and ACL fees achieved in 2013 provides clarity on the intended purpose of fees paid by a Costs Lawyer. Further, it affords Costs Lawyers the choice as to whether they become a member of their profession's representative body.

D.10 (a)-(d) inc: Transparency

On 25 July 2016 the CLSB initiated an 8 week consultation with Costs Lawyers and the ACL on the proposed PCF 2017. The closing date for responses was set as being midnight on Friday 9 September 2016. The consultation paper was also made available through the CLSB website. A consultation response report is attached to this application, there were no objections to the proposed PCF 2017.

In May 2016, the CLSB introduced a new section on its website titled "cost of regulation" under which it brought together the costs history of the:

- (i) The annual running costs of the CLSB for years 2013 onwards under the headings of salaries (including tax, NI & pension), travel & subsistence, rent, phone, admin, equipment, services & levies, misc. & transfer to reserves.
- (j) Annual Costs Lawyer practising certificate fee.
- (k) Annual LSB levy.
- (l) Annual Legal Ombudsman levy.

D.10 (e): Explanatory notes

The fee note for the PCF 2017 will set out at a minimum:

- The amount of the PCF 2017.
- The period the PCF 2017 will cover.
- Clarification on separate fees for representation (ACL) and regulation (CLSB).
- The benefits of holding a Costs Lawyer practising certificate.
- Tax relief under SI 1126/2013: The Income Tax (Professional Fees) Order 2013.
- Closing date for an application.

Explanatory notes on the reverse of the fee note for the PCF 2017 will provide, at a minimum:

- Historical information.
- Clarity on the reserved legal activities of a Costs Lawyer and their basis in law.
- Clarity on what the PCF 2017 will be.
- The regulatory objectives to be achieved by the CLSB.
- The permitted purposes of the CLSB.
- The professional principles promoted by the CLSB.
- Clarity on the consultation process undertaken.
- Clarity on the LSB & Legal Ombudsman annual levy.

D.11 (b): Budgets

There remains uncertainty on the likely impact of electronic bills of costs currently voluntary, but expected to become mandatory in October 2017. Further, the scope of fixed costs could be significantly widened during 2017. The CLSB is of the view the proposed PCF 2017 is fair and reasonable in all the circumstances. It will provide the CLSB with adequate funding to provide for regulatory arrangements that are proportionate, accountable, consistent, transparent and targeted during 2017.

The CLSB operates on a low cost basis as it draws in specialist resource from a team of support personnel on a needs be rather than permanent employee basis, and will continue with this business strategy during 2017. The CLSB has now been operative as an approved regulator since 31 October 2011 and has proven itself, during that time, to have exercised sound financial management for the benefit of the profession.

D.11 (c): Breakdown of fee

Under the consultation process, the CLSB attached its budget for 2017 which set out the basis for the proposed PCF 2017. Costs Lawyers were advised that the proposed PCF 2017 of £250.00 included the annual per Costs Lawyer levy payable by the CLSB to the LSB & LeO. Explanatory notes on the fee note for the PCF 2016 stated *“The PCF 2016 includes sufficient sums to enable the CLSB to pay the annual LSB & LeO levy, historical details of which can be*

found on the CLSB website." The CLSB proposes a similar note on the PCF 2017 fee note to ensure availability of information and transparency.

D.11 (d): Contingency funds

Whilst the CLSB can seek financial support of the ACL should it consider it necessary, it has always been the objective of the CLSB to be fully financially independent of the ACL. Through steady and sound financial management, the CLSB has continued to build on its financial reserves. The CLSB is of the view the proposed PCF 2017 will provide adequate finance to enable delivery of its 2017 business plan and further deliver on its 62 point action plan following the LSB assessment of CLSB performance in 2016. In the unlikely event it does not provide adequate income to meet these objectives, the CLSB has adequate reserves (80% of annual operating income) by way of contingency and will consider recovery of any reserves used when considering the PCF 2018.

D.11 (e): Spend on permitted purposes

All income received under the PCF 2016 was spent on permitted purposes and all income received under the PCF 2017 will likewise be spent only on permitted purposes.

D.11 (f): Regulatory & diversity impact assessment

As it is intended the fee will remain the same for the sixth consecutive year, the CLSB does not consider there would be any adverse impact on the diversity of the profession. The CLSB undertook a diversity survey in 2012, 2013, 2014 and 2016. As this did not evidence any significant change or need for CLSB action, the CLSB board agreed the next survey would be conducted in 3 years. As a result, this will present a costs saving of approximately £1,500 for years 2017 and 2018.

8. Request for approval of Costs Lawyer PCF 2017

The CLSB respectfully requests the LSB approves the PCF 2017 in the sum of £250.00.

9. Contact

Any request for clarification on this application should be addressed to:

Lynn Plumbley (Chief Executive)
Costs Lawyer Standards Board
Centurion House, 129 Deansgate, Manchester, M3 3WR

Phone: 0161 956 8969

Email: ceo@clsb.info

Dated: 10 September 2016