

Iain Stark
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Association of Costs Lawyers (ACL)
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**LEGAL SERVICES
BOARD**

Legal Services Board
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www.legalservicesboard.org.uk

17 December 2012

Dear Iain

Warning notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Legal Services Board ("the Board") has been considering the application made by the Costs Lawyer Standards Board ("CLSB") under Part 3 of Schedule 4 to the Legal Services Act 2007 (the "Act") for the approval of regulatory arrangements relating to Trainee Costs Lawyers.

In accordance with Paragraph 21(1)(b) of Schedule 4 to the Act, the Board is issuing this warning notice to the ACL as the approved regulator because it is considering whether to refuse the application. The warning notice is attached to this letter and is addressed to the Costs Lawyer Standards Board ("CLSB") who made the application.

The details on the expiry of the warning notice are set out in the in attachment, we would be grateful if you could please confirm receipt of it by email.

I am sending a copy of this letter to Graham Aitken, Chair, CLSB and Lynn Plumbley, Chief Executive, CLSB.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris', written over a light blue horizontal line.

Chris Kenny

Chief Executive

E chris.kenny@legalservicesboard.org.uk

Cc: Graham Aitken, Chair, CLSB and Lynn Plumbley, Chief Executive, CLSB.



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Graham Aitken
Chair
Costs Lawyer Standards Board
Centurion House
129 Deansgate
Manchester
M3 3WR

17 December 2012

Dear Graham

Warning notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

You will be aware that the Legal Services Board (“the Board”) has been considering the application made under Part 3 of Schedule 4 to the Legal Services Act 2007 (the “Act”) for the approval of regulatory arrangements relating to Trainee Costs Lawyers.

In accordance with Paragraph 21(1)(b) of Schedule 4 to the Act, the Board is issuing this warning notice because it is considering whether to refuse the application. Having had regard to the statutory criteria set out in Paragraph 25 of Schedule 4 to the Act, the Board has concluded that important aspects of the proposed changes justify further consideration.

The refusal criteria listed in Schedule 4, Paragraph 25 of the Act set out the circumstances in which the Board can refuse an application. In particular, we will give further consideration to some specific issues, which relate to the following refusal criteria:

- 1. Paragraph (3)(b) and (4)(b) refers to a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated.*

Paragraph 2.14 of the Operational Protocol between the CLSB and the representative body, the Association of Costs Lawyers (ACL), sets out that ACL has operational responsibility to ‘Set and manage the professional standards of Trainee Costs Lawyers’. In the light of this it is not sufficiently clear to the Board that the CLSB has the requisite powers to regulate Trainee Costs Lawyers.

2. *Paragraph (3)(b) refers to granting the application being contrary to any provision made by or by virtue of this Act (i.e. Section 28(3) of the Act, whereby an approved regulator must have regard to the Better Regulation Principles (BRP)).*

The CLSB has not provided sufficient evidence to explain the extent of the regulatory problem that it is trying to address. We have therefore come to the view that the proposals have not shown due regard to the BRP and in particular, that the proposals are not proportionate or targeted at a problem which requires regulatory intervention. We note from additional information provided from CLSB on 8 November 2012 that disciplinary cases against Trainee Costs Lawyers have been few and there have been no recorded professional conduct complaints from consumers regarding Trainees. CLSB has also suggested in its responses to our issues log on 20 November 2012 that there is an existing problem with ACL and ACL Training's current regulations to deal with discipline and conduct issues. However, this statement was not supported by any evidence.

Paragraph 22(1) of Schedule 4 to the Act and Paragraph 19 of our Rules for Rule Change Applications¹ provides that where a warning notice has been issued, the Board may obtain advice about whether the application should be granted. The Board does not think it necessary to seek advice for this application.

The Board will make a decision based on the evidence presented in the application and the additional information received from CLSB during the initial decision process. If the CLSB wishes to respond to the two points the Board has highlighted in paragraphs 1 and 2 above, you may do so by 31 January 2013. Any responses should be supported by evidence which has not already been provided by the CLSB.

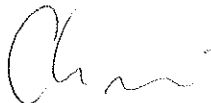
Paragraph 26(3) of Schedule 4 to the Act provides that the Board has a period of 12 months from the date of your receipt of this warning notice to continue considering the CLSB's proposed rule change. The Board may, in accordance with paragraphs 26(4) and (5) and (6) of Schedule 4 to the Act, issue on one or more occasions, an extension notice before the end of the 12 month period to extend the decision period by up to six months.

This warning notice has been sent by post; a copy is also provided electronically by email. The decision period will expire (unless extended on the basis explained above) in 12 months beginning with the day on which ACL as the approved regulator receives the warning notice, we have requested the ACL confirm receipt by email. A copy of the warning notice will be placed on the Board's website on the day after ACL confirms receipt in order for the Board to comply with the requirements of Paragraph 21(2) of Schedule 4 to the Act.

¹[http://www.legalservicesboard.org.uk/what we do/regulation/pdf/rules for rule change applications v2 Novem
ber2010.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_for_rule_change_applications_v2_November2010.pdf)

I am sending a copy of this warning notice to Iain Stark, Chairman, ACL and Lynn Plumbley, Chief Executive, CLSB.

Yours sincerely

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Chris Kenny

Chief Executive

E chris.kenny@legalservicesboard.org.uk

Cc: Lynn Plumbley, Chief Executive, CLSB, Iain Stark, Chairman, ACL.