

**Application to Legal Services Board
S. 20, Schedule 4, Part 3 of Legal Services Act 2007**

**Applicant: Costs Lawyer Standards Board (CLSB)
Purpose: Approval of changes to Training & CPD Rules**

Application date: 18 May 2017

1. Attachments

- (i) Consultation paper
- (ii) Current Training & CPD Rules (1 January 2013)
- (iii) Proposed new Trainee Costs Lawyer Training Rules
- (iv) Proposed new Costs Lawyer Continuous Professional Development (CPD) Rules

2. This application

S.4 of the Legal Services Act 2007 (LSA) states that the LSB “*must assist in the maintenance and development of standards in relation to:*

- (a) the regulation by approved regulators of persons authorised by them to carry on activities which are reserved legal activities; and*
- (b) the education and training of persons so authorised.”*

LSB approval is therefore sought in accordance with S. 19 (2) (b), Schedule 4, Part 3 of the LSA.

3. Transparency

The CLSB engaged in consultation on proposed changes between 1 February 2017 and 21 April 2017 (11 weeks and 2 days). Further, the CLSB posted the documents and a news item on its website. Responses were received from, inter alia, Costs Lawyers, the ACL Student Council and ACL Training. The ACL did not respond.

4. Outcome of consultation: Changes to rules applicable to Trainee Costs Lawyers

Question 1: Do you agree with the proposed changes as set out in section 1?

Strongly agree	7
Agree	6
Neither agree nor disagree	2 (as agree some parts only)
Disagree	3
Strongly disagree	1

It is apparent from responses received that those who registered “disagree” raised questions with some but not all of the proposed changes. Those who agreed made comments such as “*excellent suggestions that remove a lot of current unfairness*”, “*they generally seem sensible*” and “*this makes a great deal of sense.*”

5. Changes made following consultation

Firstly, the CLSB has taken this opportunity to separate the current combined Training & CPD Rules into two documents and review how the information is presented to provide sets of rules which are clear and concise:

- Trainee Costs Lawyer Training Rules; and
- Costs Lawyer Continuous Professional Development (CPD) Rules

Rules on entry to the profession via the three year qualification would therefore have one set of standalone rules. Therefore, in the event the CLSB proceeds with its proposed second option on entry into the profession (as consulted on under the same paper) this can be addressed under a separate set of standalone rules.

Secondly, the CLSB considered all submissions made under the consultation and reacted where it considered appropriate to provide clarity. All changes made appear in the proposed Trainee Costs Lawyer Training Rules, the main changes following consultation being as follows:

- (i) Current Rule 7.2, sets the examination pass rate at 65%. Under aims and outcomes of the Costs Lawyer qualification approved by the LSB the pass rate was set at 50% and it is understood that ACL Training has been applying that 50% pass rate. This rule has therefore been removed from the proposed new rules to avoid contradiction. Whilst the CLSB considers the pass rate of 50% to be low, it accepts that it is all relative in terms of the marking structure. At present, based on the number of passes and fails, no need has been identified to argue for the original pass rate of 65% to be reintroduced.
- (ii) Current Rule 7.4, which the CLSB had proposed to carry forward, states that the qualification is a three year course and cannot be completed in less than that time. Following representations by ACL Training that if this rule was removed, there would be scope, following agreed exemptions, for the modules to be re-worked to provide for the qualification to be achieved in 2 years for example, the CLSB agrees that it is appropriate to delete the three year rule. This will then enable dialogue between CLSB and ACL Training to achieve a shorter route to qualification.
- (iii) ACL Training suggested moving away from being prescriptive in relation to those qualifications for which exemptions can be applied. One Costs Lawyer respondent advised that they had studied the law of tort and contract under their qualification of Criminal Justice and Applied Psychology BA Joint Hons. On that basis, CLSB has revised Rule 9 to enable the CLSB to work with an Accredited Study Provider (ASP) to consider exemptions where a need is identified, thus ensuring fairness.

9. Exemptions

9.1 A table of CLSB approved exemptions to modules/units for qualifications including a law degree, bar professional training course, legal practice course and C.ILEX can be located on the CLSB website at www.clsb.info.

9.2 Exemptions will be applied by an ASP where an Applicant has evidenced they have successfully undertaken study for the exempted module/unit. An Applicant will assist an ASP in validation of a qualification otherwise no exemptions will be applied.

- (iv) On the proposal that an ASP applies a pro-rata reduction of its fees in respect of exemptions, one respondent stated *“running costs may not be reduced by exemptions (or may not decrease proportionately).”* Another, stated the approved study provider is *“a commercial entity that will apply a commercial model The ASP will need to increase the cost of the modules to which trainees are not exempt.”*

Comments in support included *“I agree with the principle of reducing some of the fees”* another said *“I think these are excellent suggestions that remove a lot of the current unfairness in the training provision. I have a colleague who is looking to do the course as a solicitor ... who is put off by the fact she would have to redo modules ... and would also have to pay again to do them.”*

In an attempt to strike a balance, the CLSB proposes the following Rule. This is considered fair and reasonable based on each yearly unit having 6 modules.

9. Exemptions

9.3 Where exemptions are applied, an ASP will apply a reduction of 15% per exempted module on the overall unit fee. Where all 6 modules in a unit are exempted, no fee will be payable to the ASP for that unit.

- (v) The CLSB considered there was a need for an appeal process by an applicant and accordingly has written in a proposed new Rule 11, which provides an appeal mechanism in the event an application to become a Trainee Costs Lawyer is refused. This new rule seeks to ensure fairness.

Appeal process

11.1 In the event an application is refused by an ASP under rules 4, 5 and 6, the Applicant may, within 14 days, make a written appeal to the CLSB.

11.2 The Applicant must set out in full the reasoning for the appeal and attach all required evidence e.g. application, ASP decision and other relevant supporting documentation.

11.3 The CLSB will use all reasonable endeavours to consider the appeal within 14 days.

11.4 The CLSB will advise the Applicant in writing as to the appeal outcome, setting out its reasoning in full.

11.5 The CLSB will send a copy of the appeal outcome to the ASP.

11.6 In the event the CLSB upholds the Applicants appeal, the ASP will comply with the appeal outcome of the CLSB.

By listening and making these changes, the CLSB is of the view that the proposed new Trainee Costs Lawyer Training Rules removes contradictory and unfair terms.

6. Outcome of consultation: Changes to CPD

Question 2: Do you agree with the proposed changes as set out in section 2?

Strongly agree	6
Agree	10
Neither agree nor disagree	1
Disagree	3
Strongly disagree	

7. Changes made following consultation outcome

As stated above, the CLSB has taken this opportunity to separate the current combined Training & CPD Rules into two documents. The proposed changes are therefore covered in the Costs Lawyer Continuous Professional Development (CPD) Rules.

The CLSB considered all submissions made under the consultation and introduced change where it considered appropriate to provide clarity. The main changes following consultation being as follows:

- (i) The need for two CPD tables was reconsidered. In view of caps on activities, the two tables were therefore merged. A new column has been inserted into the table to ensure clarity on the points cap applicable. This now provides greater clarity. Activities were also merged where it was considered appropriate to result in one table which is clear and concise.
- (ii) Previous CPD activity 1(f) has been changed to permit one point for preparation. This takes into account the learning achieved in research and preparation. The CLSB is comfortable with this, as the number of points under this activity has been capped at four.
- (iii) Under the consultation, reference to a podcast was queried. Therefore previous 1(e) has been re-worded to “*undertaking training via internet (e-learning)...*” for greater clarity and used webinars and podcasts as examples.

- (iv) A consultation respondent queried the definitions of coaching and mentoring a Trainee Costs Lawyer. Accordingly, this CPD activity has been revised to read *“Supervising a Trainee Costs Lawyer undertaking the Costs Lawyer qualification”*.
- (v) The CLSB has set out more clearly acceptable providers of CPD.
- (vi) In light of the revised qualification including a section on business acumen, and the number of Costs Lawyers who are either sole practitioners or run a costs law business, CPD now provides for CPD, capped at three points, for *“receiving or delivering training in relation to practice management”*

By listening and making changes, the CLSB is of the view the proposed new Costs Lawyer Continuous Professional Development (CPD) Rules provide greater clarity on the expectations of a Costs Lawyer in relation to CPD and how that expectation can be met.

8. Outcome of consultation: Other suggestions

Question 3 asked: Do you have any other suggestions on how CPD can be achieved under table 1 or 2? Comments on CPD were considered and the proposed rules revised where considered appropriate however no new suggestions were identified as a result of comments made under this consultation question.

9. Impact on regulatory objectives

By seeking to make these changes:

- (i) The public and consumer interest will be more effectively protected by removing certain barriers to entry into a regulated profession and CPD being clearer.
- (ii) Access to justice will be improved by increasing qualified and regulated costs practitioners as opposed to unregulated costs draftsmen.
- (iii) By increasing access to the profession, competition in the provision of services will increase.

10. Compliance with better Regulation principles

The application follows the principles set out under S.28 (3) of the Legal Services Act 2007 in that the proposed changes encourage greater access to the regulated profession and an effective profession, which in turn protects consumers and the public interest.

- (i) Outcomes focused: CLSB became aware of the need for the rules to be reconsidered following comments made since implementation by the ASP, Costs Lawyers and Trainee Costs Lawyers.
- (ii) Accountability: Existing accountability to the CLSB will not be impacted.
- (ii) Proportionality & consistency: The application is proportionate as it does not seek to increase burden and cost.
- (iii) Targeted: The changes are targeted where a need for change has been identified.
- (iv) Impact on other Approved Regulators: No impact on other approved regulators and their regulated professions have been identified.

11. Equality impact

The CLSB does not consider that the proposed changes contradict principles set out in the CLSB equality & diversity policy.

12. Monitoring effectiveness

If the proposed changes are approved by the LSB, the CLSB will continue to monitor its Training & CPD Rules on an ongoing basis, to ensure they remain current and fit for purpose.

13. Submission

The CLSB has listened to those it consulted and has reacted where it considered appropriate. The CLSB is of the view these changes support and provide clarity in the development and maintenance of standards. This application is made in the best interest of both the consumer and the profession and supports regulatory objectives for reasons set out herein.

The LSB is required to assist the CLSB in the maintenance and development of standards (S.4 of the LSA) and accordingly seeks LSB approval of the Trainee Costs Lawyer Training Rules & Costs Lawyer Continuous Professional Development (CPD) Rules attached to this application.

14. Contact details

The CLSB can be contacted in relation to this application by email, post or phone:

Email: ceo@clsb.info

Post: CLSB, Centurion House, 129 Deansgate, Manchester, M3 3WR

Phone: 0161 956 8969

END