

To:	Legal Services Board	
Date of Meeting:	27 November 2013	Item: Paper (13) 83

Title:	Application under Schedule 4, Part 3 of the Legal Services Act 2007 from the Costs Lawyer Standards Board; regulatory arrangements for trainee Costs Lawyers	
Workstream(s):	Statutory decisions making	
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Status:	Unclassified	

Summary:
<p>This paper sets out the Executive's recommendation that the Board refuse the application from the Costs Lawyer Standards Board (CLSB) seeking approval of changes to regulatory arrangements introducing arrangements for trainee costs lawyers.</p> <p>This recommendation is made on the basis that the application and subsequent information provided has not demonstrated that there is an issue which requires a regulatory intervention and it is therefore not consistent with the duty to have regard to the better regulation principles</p>

Recommendation(s):
<p>The Board is invited:</p> <ul style="list-style-type: none"> (1) Refuse the application (2) Approve the decision notice refusing the application

Risks and mitigations	
Financial:	None
Legal: [FoIA s42]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Reputational:	This will be the first time that an application under Schedule 4 to the Act seeking approval to changes to regulatory arrangements has been refused and as such may attract some media interest/commentary
Resource:	None

Consultation	Yes	No	Who / why?
Board Members:	√		The draft Decision Notice has been shared with Barbara Saunders and Anneliese Day
Consumer Panel:		√	
Others:	None		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Section 22 – information intended for future publication	

LEGAL SERVICES BOARD

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Application under Schedule 4, Part 3 of the Legal Services Act 2007 from the Costs Lawyer Standards Board; regulatory arrangements for trainee Costs Lawyers

Background

1. The application was received in October 2012.

Proposal

2. The CLSB application sets out that the training for Costs Lawyers consists of a three year modular course and three years qualifying experience in costs law and practice as an employee of an authorised person e.g. Costs Lawyer or solicitor. The experience element is usually completed alongside the modular course. In the training period, trainees are not authorised to undertake reserved legal activities, but they can represent clients. As they are not authorised persons, Trainee Costs Lawyers are not subject to the CLSB regulatory regime.
3. The CLSB proposed that Trainee Costs Lawyers who practise as they study should be regulated in the same way as their fully qualified colleagues in the interests of consumer protection. In policy terms, their argument was that there was a material gap in consumer protection which needed to be addressed and the proposal was for a regime fully equivalent to that for qualified persons, rather than simply for regulation of the training regime per se.

Warning Notice

4. On 17 December 2012, a warning notice was issued, in accordance with Schedule 4, paragraph 21(1)(b), to CLSB that the LSB were considering refusing the application on the basis that two of the criteria in Schedule 4, paragraph 25(3) may have been met.
5. Schedule 4, Paragraph 25(3)(b) allows refusal if any of the designation requirements cease to be satisfied; 25(4)(b) sets out that the designation requirements include 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. "Competence" includes "legal competence", i.e. that it has the necessary powers to do that which the regulatory arrangements propose. Paragraph 2.14 of the Operational Protocol between the CLSB and ACL sets out that ACL has operational responsibility to „Set and manage professional standards of Trainee Costs Lawyers'. In light of this it was not sufficiently clear to the LSB that the CLSB had the requisite powers to regulate Trainee Costs Lawyers.
6. Paragraph 25 (3)(b) of Schedule 4 to the Act allows refusal where to grant the application would be contrary to any provision made by or by virtue of this Act. Section 28(3) of the Act imposes an obligation on approved regulators to have regard to the Better Regulation Principle (transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).

The application and supplementary information did not contain sufficient evidence to explain the problem that the proposed regulatory intervention was seeking to address.

Consideration of potential refusal under 25(3)(b) and 25(4)(b) - Competence

7. LSB has received evidence from CLSB confirming that the ACL board has agreed that going forward CLSB should set and manage the professional standards of Trainee Costs Lawyers. We are content that the CLSB now has the authority to regulate trainees.

Consideration of potential refusal under 25(3)(b) – Better Regulation Principles

8. CLSB has not been able to provide sufficient information to demonstrate that there is an issue which requires regulatory intervention. LSB remains of the view that there is insufficient evidence of a regulatory issue to justify the imposition of additional regulatory requirements on Trainee Costs Lawyers.
9. Therefore, contrary to s28 of the Act, it has not been possible to demonstrate that the proposal is consistent with the Better Regulation Principles. Further detail on this can be found in paragraphs [18] to [22] of the draft decision notice in Annex a.

Recommendation

10. Although the number of practitioners affected by this change, were it to be approved would be small, we do consider that we need to act. We believe that the statutory tests for refusal are clearly met and that failure to respond to a proposal for which the evidence base is so weak, would create a very unhelpful precedent should we need to take similar action against a larger body in future.
11. The Board is therefore invited:
 - Refuse the application by CLSB to alter the regulatory arrangements for trainee Costs Lawyers.
 - Agree the decision notice, set out in Annex A.

15 November 2013