



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Costs Lawyer Standards Board (CLSB) rule change application for approval of alterations to the Costs Lawyer Code of Conduct

The Legal Services Board (LSB) has granted an application from the CLSB for approval of alterations to the Costs Lawyer Code of Conduct (the Code), to include the authorisation rights of costs lawyers. The revised Code set out the arrangements that will come into force on the date of this Decision Notice.

This Decision Notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators for approval of alterations to their regulatory arrangements. The Association of Costs Lawyers (ACL) is an approved regulator and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed alteration to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's approval of alterations to regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application for approval of alterations to the regulatory arrangements must be made, including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub-paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this Decision Notice.

Proposed changes

5. The CLSB's application sought approval of changes to the Code to transfer the practising rights of costs lawyers, which are currently listed in a separate 'Statement of Rights', into a new 'Authorised Rights' section of the Code. This also provided the opportunity for some re-writing of this section.
6. CLSB also proposed to add a new principle (1.2) to the Code; "You must not attempt to carry on a reserved legal activity other than one you are authorised to undertake under the LSA".

Decision

7. During its review of the application, the LSB considered the proposed Authorised Rights section of the Code against the current Statement of Rights. We were satisfied that the Authorised Rights reflected the Statement of Rights and welcomed the simplification of the presentation of the arrangements.
8. The LSB sought clarification from CLSB about the wording of the section of the new part of the Code which covers proceedings relating to other matters in addition to costs. The LSB considered that the wording of the section as submitted in the application risked confusion. The CLSB subsequently resubmitted a revised version of the Code. The LSB is now satisfied that this better reflects the intention of the CLSB's approach.
9. The LSB is also satisfied that the new principle 1.2 serves to reflect costs lawyers' obligations under section 14(1)³ of the Act.
10. The LSB has considered the CLSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
11. The Annex to this Decision Notice contains the rule changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the CLSB on 5 March 2014.

³ Section 14 (1) of the Act states that "It is an offence for a person to carry on an activity ("the relevant activity") which is a reserved legal activity unless that person is entitled to carry on the relevant activity."

- The 28 day initial decision period for considering the application ends on 1 April 2014.
- This Decision Notice is effective from and is being issued to CLSB on 26 March 2014.
- The Decision Notice will be published on our website on 27 March 2014.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
26 March 2014