



# **Responses of the Association of Costs Lawyers to the Costs Lawyers Standards Board Consultation on a Costs Lawyer Competency Statement**

October 2021



## OUR BACKGROUND

The Association of Costs Lawyers (ACL) is a membership organisation representing regulated lawyers, students and retired practitioners in the field of legal costs.

ACL was founded in 1977 as the Association of Law Costs Draftsman (ALCD) with the aim of promoting the status and interests of its members. In 2007 Fellows of the ALCD were granted the right to conduct costs litigation and rights of audience under the Legal Services Act.

In 2011 the ALCD was renamed as the Association of Costs Lawyers and became the statutory regulator of qualified costs practitioners. In line with the Legal Services Act, ACL delegated all regulatory obligations to the Costs Lawyers Standards Board (CLSB).

There are currently 552 Cost Lawyers and student members of ACL who have all qualified/studying to qualify as regulated legal practitioners under the Costs Lawyers Course ran by Association of Costs Lawyers Training (ACLT). Our members practice in a wide variety of environments, some employed in-house in firms of Solicitors or Insurers, some are sole practitioners and still more are employed as external consultants. This response is neither meant to represent the personal views of ACL Council or the individual views of ACL members. ACL's response is also not made on behalf of its subsidiary company ACLT, who are the current providers of the Costs Lawyer course. It is intended to reflect the anticipated views of ACL's membership who, with their wide ranging experience in all matters relating to costs practice, will be able to add substantial context to the consultation

ACL has urged its members to respond to CLSB's consultation in an individual capacity, in order to provide as full a response as possible from members of the legal profession who are most affected by the introduction of a competency statement.

**1. IS IT CLEAR FROM PAGES 3 TO 5 OF THE COMPETENCY STATEMENT HOW THE DOCUMENT SHOULD BE USED AND HOW THE ELEMENTS FIT TOGETHER? IF NOT, WHAT OTHER INFORMATION WOULD BE HELPFUL?**

ACL believes that it is clear from the Competency Statement how it is to be used. ACL is satisfied that prospective Costs Lawyers and qualified Costs Lawyers will be able to navigate their way through the rest of the document and understand how each section builds on the previous.

The use of diagrams/pictorial representation is effective. However, the status of professional attributes may be more effectively presented as more 'umbrella' attributes rather than elements that only come about after reaching the minimum standard.

It must however be noted that ACL is a representative body of its members and not an educational provider. On the face of it the answer to the narrow question asked would be yes it is clear as to how the Competency Statement will be used, however neither

ACL nor the CLSB have an inherent background in educational provision. It will thus be incumbent upon the profession's regulators to keep the development of a Competency Statement under close review.

**2. DOES THE COMPETENCY STATEMENT REFLECT THE KNOWLEDGE YOU WOULD EXPECT A NEWLY QUALIFIED COSTS LAWYER TO HAVE? IF NOT, WHICH AREAS SHOULD BE ADDED OR EXCLUDED, AND WHY?**

Broadly, ACL is satisfied that the knowledge criteria set out in the Competency Statement is broadly accurate. However, ACL would expect that the detailed table with definitions (as located in pages 8 and 9 of the consultation document) should be included in the Competency Statement itself. The definitions should be included to enable individuals to understand what headings such as 'other litigation' means without recourse to additional documents.

It should be noted that whilst a student can be working in a particular environment during their supervised practice, they may move into another environment where they are faced with different work types, such as legal aid, probate etc. It is important that the criteria is flexible enough to reflect those circumstances.

The changing professional environment in which our members are working is leading to a greater emphasis on advocacy at varying levels. ACL would hope that these changing trends will be monitored and incorporated into the criteria as necessary.

**3. DOES THE COMPETENCY STATEMENT REFLECT THE SKILLS YOU EXPECT A NEWLY QUALIFIED COSTS LAWYER TO DEMONSTRATE? IF NOT, WHICH SKILLS SHOULD BE ADDED OR EXCLUDED, AND WHY?**

ACL is generally satisfied that the skills proposed and the definitions and behavioural indicators reflect what a newly qualified Costs Lawyer should be demonstrating.

ACL would however suggest that the 'effective communication' skill could be separated into 'legal drafting' and 'effective communication'. ACL believes that newly qualified Costs Lawyers will be communicating with two distinct audiences; their clients and the court.

By creating an additional 'legal drafting' element to the Competency Statement would allow consumers to understand the distinct roles a Costs Lawyer would be performing.

**4. DO YOU AGREE THAT THE MINIMUM STANDARD IS SET AT THE APPROPRIATE LEVEL TO ESTABLISH THE THRESHOLD FOR QUALIFICATION (AND AUTHORISATION) AS A COSTS LAWYER? IF NOT, HOW SHOULD IT BE ADJUSTED AND WHY?**

The introduction of a 'Minimum Standard' for newly qualified Costs Lawyers is perhaps the most difficult element of any Competency Statement to draft, primarily due to semantics. ACL agrees with CLSB's assessment of the difficulties in setting this minimum standard. It must be sufficiently high to achieve the regulatory objectives,



but not excessively high as to be a barrier to entry into the profession. CLSB will of course be aware of its obligations to ensure a vibrant and diverse regulated community as a regulatory objective.

ACL would submit that the relationship between the statements within the Minimum Standard should be expanded upon. For instance it is not clear what a technical error (and thus be in breach of point 1) would look like. It is the very nature of litigation that technical points are pursued and sometimes defeated. There is no guidance within the Competency Statement in respect of who determines whether work is technically incorrect or indeed negligent. It would be beneficial to Costs Lawyers and prospective Costs Lawyers to be made aware at an early stage as to what body would define negligent or incorrect work.

**5. DO YOU AGREE THAT DEVELOPMENT OF THE ATTRIBUTES SHOULD BE ENCOURAGED, AS A TOOL TO PROMOTE COMPETENCE, RATHER THAN THE ATTRIBUTES BEING SPECIFICALLY MEASURED/ASSESSED AT THE POINT OF QUALIFICATION?**

ACL agrees that the attributes set out in the Competency Statement should be encouraged. ACL also agrees that these are not capable of being measured or assessed. These are all essentially 'soft skills' that ACL believes will naturally follow for a Costs Lawyer who has the knowledge and skills to complete the Costs Lawyers course. These also tie in with the new Continuing Professional Development requirements introduced this year. The new emphasis on individual development will encourage these attributes to be demonstrated without the need for formal assessment.

**CONCLUSION**

Following ACL's responses it is clear that the golden thread that runs through each is that the Competency Statement as a document will only be effective if it accurately reflects the changing needs of the profession and its clients. This means that the document will have to be under almost constant review to ensure its relevance and that it is fit for purpose.