



Costs Lawyer Standards Board (CLSB)  
Centurion House  
129 Deansgate  
Manchester M3 3WR

20 June 2018

Dear Sirs,

**Response to Costs Lawyer Standards Board Consultation paper – Costs Lawyer Competence Test (CLCT)**

This response has been prepared on behalf of the ACL Legal Aid Group (LAG) by its Executive Committee. The ACL LAG is the special interest group for ACL members who provide services in legal aid costs and costs incurred under legal aid payable by another party (legally aided inter partes). It both represents the interests of those costs lawyers and other ACL members and provides support and assistance to them.

The LAG consists of both 90 qualified and regulated costs lawyers and 10 others that work in costs who are not regulated by the CLSB. (Membership of the ACL LAG is optional for those with an interest in legal aid, and not all ACL members practising legal aid costs are members of this group.)

*Q1(a): Do you agree with the principles of the proposal?*

No. In their present form they cannot be agreed.

There are a number of concerning inaccuracies in the consultation. For example, the proposal states that advocacy, a reserved legal activity, is not required in legal aid cases. This statement is wrong, whilst many legal aid costs lawyers will not undertake advocacy routinely, advocacy is still required in both legally aided inter partes cases and 'legal aid only' cases (where all costs are paid out of the Legal Aid Fund). Inter partes costs orders are made in both family (occasionally) and civil proceedings (more often) funded under legal aid. Indeed, some ACL LAG members' practices are predominantly legally aided inter partes cases. There are also legal aid only court assessment hearings either where the client has a financial interest and wishes to make submissions about the bill, and/or a hearing is sought following legal aid only provisional assessment. Therefore, legal aid costs lawyers may be required to undertake advocacy on behalf of either the solicitor or a legally aided client with financial interest challenging their

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solicitor's costs. Further, although rare, oral representations may be required on appeals of assessments carried out by the Legal Aid Agency which also requires advocacy skills.

The ACL LAG Executive Committee has been aware for a number of years that the ACL and ACLT have sought approval from the CLSB for more flexible options to achieving qualification (including exemptions for solicitors, barrister and c.ilex etc.) at lower cost to the candidate (all of which were welcomed by many past and present ACL LAG committee members), and that these were all rejected by the CLSB. Therefore, we are confused as to why you seem to indicate that lack of exemptions, competition and high cost is an issue that a) was caused by ACL/ACLT and b) could not have been dealt with by the CLSB when proposals were brought to it years before the Cost Lawyer profession found itself with a dearth of new talent to replenish the ranks.

For those specialising in legal aid, costs and resources have been at an increasing premium for decades and never more so than currently. The ACL LAG has discussed the barriers of cost and resources to becoming a costs lawyer with numerous potential candidates, and since it was created in 2012 the LAG has sought (via the ACL and ACLT) a more flexible approach reducing cost and resources for potential candidates. However, candidates must still be adequately prepared for a career in costs law, especially a complex area such as legal aid (which can intersect with other areas such as inter partes and Court of Protection). Unfortunately, we cannot see how the current proposals will ensure that all suitable candidates will be of suitable standard, and further that they can access the qualification. After years of waiting for a change to the way in which candidates can qualify, this is very disappointing.

*Q1(b): Do you agree with the access criteria (Annex 1)?*

No.

Firstly, the exemption policies being proposed are more restrictive than the current exemptions offered by ACLT. However, the proposals mean that a barrister (who has not even completed pupillage let alone having practised within a certain period of time), or solicitor (again with no requirement to have practised within a certain period of time), needs no work experience at all in costs law before undertaking the multiple-choice test on costs law in order to qualify as a costs lawyer.

Secondly, the means of access to the CLCT would create the following numerous barriers to entry:

1. For candidates that do not have costs work experience or a legal qualification.
2. For candidates with less than five years' work-based experience (WBE) that have not had a costs lawyer to supervise them for 3 years in costs law practice (e.g. a self-employed sole trader). Also, they must have CPD of 15 hours per year for the 3 years'

WBE – this lends itself to indicating quasi regulation, even though the Legal Services Board rejected the CLSB’s proposals made in 2013 to regulate trainees.

Consequently, such candidates will most likely have to secure a junior (and most likely low paid) position supervised by a regulated costs lawyer for 3 years and find the funds to pay for more CPD than is required of a regulated costs lawyer. The business model/job which most legal aid costs professionals have to adopt/engage with in order to secure work in the post-LASPO climate does not facilitate this, making access to the CLCT impossible for many of these candidates. In fact, the reason that many legal aid costs professionals undertake the current course is because they are otherwise without access to a network of fellow costs professionals, and they can ensure that they have reasonable knowledge and expertise together with ongoing post-qualification CPD.

The requirement for those with under 5 years’ WBE is in stark contrast to candidates claiming that they have over 5 years’ WBE, who conversely simply have to submit evidence of WBE alone which is confirmed will not be tested other than through the CLCT. This creates an inexplicable disadvantage/barrier for new talent and expertise coming into the profession, which the costs lawyer profession is dependent upon to ensure its longevity.

The above indicates that these proposals are merely seeking to fix a problem in the short term and in so doing will create issues in finding a long-term solution further down the line.

*Q2: Do you agree with the standard criteria (Annex 2)?*

No.

Some candidates will need a period of pre-qualification workplace experience before qualification/regulation and others will not. Those that undertake the test by nature of their legal qualification won’t have to demonstrate any costs work experience. This is a serious concern.

Law graduates will not be tested as much on litigation as non-law graduates, even though litigation is not covered within law degrees. This is not an equal assessment of competence of all candidates.

Additionally, there does not appear to be any competence assessment for drafting. This may result in people entering the profession that are capable of explaining, orally, how documents and pleadings should be prepared but that have no experience or ability to draft those documents. This presents a risk to the consumer, who entrusts the preparation of complex claims for legal costs, and defences against them, that require highly competent and specialist drafting to ensure that those claims and defences are successful.

It is also noted that the section on the CLCT covering legal aid appears to be very brief for funding with so many complex and disparate schemes.

Yours faithfully,

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Rachel Perkins - ACL Legal Aid Group Executive Committee Secretary  
Robert Baker - ACL Legal Aid Group Executive Committee Member  
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