



Response of the ACL to the CLSB’s Consultation into the Costs Lawyer Competency Assessment (CLCA).

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Chapter 1 – Background to the Consultation

ACL are the approved regulator under the Legal Services Act 2007 who have delegated the regulatory function to the Costs Lawyers Standards Board (CLSB). Part of their function is to set the standard for education and approve any training of Costs Lawyers.

Historically, ACL have provided training and entry to the profession, most recently via their training arm, ACL Training Limited (ACLT).

Entry to the profession was through a three-year modular course with continuous assessment, provided through an online learning platform which offered remote learning facilities including tutorials and seminars, culminating in assessment by way of final examinations.

The CLSB expressed concerns about the cost and duration of the course, which they perceived to present a barrier to entry. There have been two previous consultation papers from the CLSB.

This is a response to the third consultation paper published by the CLSB on their proposal to introduce a competence assessment to replace the current route to qualification as a Costs Lawyer. This response primarily focuses upon the implications of the current proposals on the status and standards of Costs Lawyers, which the ACL seeks to maintain and further.

Chapter 2 – Our Concerns and Views in Relation to the Content of the Consultation.

- Maintaining Standards

The CLSB are responsible for setting and maintaining standards for Costs Lawyers practicing in England and Wales. When considering the proposal, the Legal Services Board must be assured that the proposed changes maintain the current standards that Costs Lawyers currently adhere to.

The ACL is concerned that the proposal lowers the standards expected of Costs Lawyers at the point of entry, i.e. that the assessment will be less rigorous than the current assessment(s).

Any reduction in the standards expected of a Costs Lawyer cannot be approved or considered without the CLSB setting out the objective and risk based criteria that led to this outcome. No information has been provided.

The ACL's objections are primarily based upon the revisions of the current threshold standard. The statement within the proposal is significantly different to the current adopted form. It requires a lower standard from a trainee at the point of qualification/regulation.

Current competent trainees are expected to be able to '*cope with complex situations through deliberate analysis and planning*' whilst '*working independently*' with a '*good working and background knowledge of costs law and practice*'. These thresholds have been replaced

within the current proposal with requirements for a trainee to deal with *'straightforward or uncomplicated work'* and to *'seek support to complete complex work'*.

The introduction of assessment via competency requires both the specification of a range of tasks and capabilities and a definitive statement of the expected *standards* of performance. The ACL is concerned that without a sufficiently rigorous threshold statement there is nothing to denote the quality of the performance we wish to see from trainees upon regulation.

This issue is apparent not only in the threshold standards but also with the access criteria. The proposal permits work based experience but has appeared to remove the learning element from this element. The proposal has set out a list of competencies to be met, with no specific criteria for the assessment of these competencies. The ACL also has significant concerns in respect of the reference provided for this work based experience. The lack of any threshold standard for the 5+ years' work based experience, coupled with the diluted threshold for newly qualified Costs Lawyers amounts, in the ACL's view to a deterioration of accepted standards for Costs Lawyers.

- Mobility

The Legal Education and Training Review recommended that unnecessary limits on horizontal and vertical mobility should be eliminated to ensure equality to candidates and diversity within the wider legal profession. The ACL believes that this proposal has created barriers to mobility, primarily through the structure of the assessment.

Knowledge assessments are usually aligned to a level of the Qualifications and Credit Framework in order that they can be compared. It is suggested that the Solicitors Qualifying Examination proposes that qualifiers will demonstrate a level of intellectual and analytical ability at least equivalent to that of a graduate (i.e at least level 6). The CLCA proposal does not indicate the level of the assessment save for within the exemption policy which indicates a level 3 equivalence. The assessment will therefore prevent mobility because the assessment cannot be compared to other legal qualifications because whilst the content may be known the size and level are not. This means that successful candidates will not be able to demonstrate they have the requisite accredited prior learning to gain exemptions from other legal qualifications.

Further, the proposal sets out that legal knowledge will be assessed in only two parts. This means that some candidates will be re-assessed in litigation having already had their knowledge of that area assessed and accredited. This may discourage candidates undertaking the assessments that have already been assessed to the required standard thus presenting a barrier to entry.

- Regulatory Objectives

There are eight Regulatory Objectives which bind approved regulators and the LSB to a set of outcomes. These include protecting and promoting the public interest, encouraging an independent, strong, diverse and effective legal profession as well as promoting and maintaining adherence (by authorised persons) to the professional principles.

By reducing the threshold standard of newly qualified regulated persons the proposals run contrary to protecting the public interest or the interests of consumers who will instruct Costs Lawyers. The inevitable implications of these proposals on the mobility of Costs

Lawyers in terms of cross qualification will impact upon the strength and diversity of the legal profession and hamper competition in respect of the provision of services.

- Proposed Content.

At Annex 2 the CLSB proposal sets out an eight-part table identifying the areas of knowledge to be expected of a Costs Lawyer at the point of qualification. Nowhere in the proposal is it explained how qualifying Costs lawyers are to gain this knowledge or to what level. It is also of concern that areas of costs specific subject areas are not present within the proposed assessment, for instance costs in respect of Litigants in Person or costs pertaining to the Court of Protection. It is feared that these omissions would be detrimental to the public interest and to access to justice in key areas.

Indeed, the structure of Annex 2 in itself is a concern as it follows little logical progression towards practical application and its structure is confusing. In its present form it could not be used for structured learning.

Chapter 3 – Executive Summary

Having regard, therefore, to the matters raised, the ACL does not believe that the CLSB's proposals can be agreed due to the impact of the above on the regulatory objectives of the Legal Services Board laid out by the Legal Services Act 2007.

Chapter 4 - Conclusion

We would merely add the hope that our comments have been useful and extend the offer of on-going assistance to the CLSB and LSB to ensure that standards of education are maintained and regulatory objectives are preserved.

This is a rapidly changing environment for Costs Lawyers as well as all other areas of the legal profession. It is imperative that our education keeps pace with the challenges posed by this ever-changing environment.