

20 June 2018

Response to the Costs Lawyer Standards Board's consultation on a Costs Lawyer Competence Test (CLCT)

In this response, based on the information currently available, the ACL Council has focused on two strategic objectives:

Maintenance of high standards: It is important that the requirements set by the CLSB continue to ensure the highest levels of rigour for those entering the profession. The CLSB must maintain the strong reputation of those qualifying in the interest of clients, the profession, students and other stakeholders. ACL Council acknowledges that modernisation will be required from time to time. ACL Council does, however, wish to emphasise the importance of ensuring that any new routes to entry are developed appropriately and also that the academic and work experience requirements maintain their credibility by means of appropriate checks and safeguards.

Ensuring a diverse profession: Any new routes to entry must ensure that the broadest range of applicants can qualify and that there are no barriers excluding candidates from non-traditional backgrounds. In this context, it is important that the new requirements are communicated clearly, simply and widely.

Q1: Do you agree with the principles of the proposal?

No. In their present form they cannot be agreed. Firstly, the entry requirements create the following barriers to entry:

1. No route of entry for school leavers that do not hold a level 6 qualification in law and are not in costs employment.
2. No route of entry for costs draftsmen with under 5 years costs work experience that do not have a costs lawyer to supervise them.

Additionally, the means of access to the CLCT would result in the following inequality in treatment of candidates:

1. Some candidates will need a period of pre-qualification workplace experience before qualification/regulation and others will not.

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2. It will cost those with less work experience more to qualify than others because of the CPD requirement, obtaining CPD may be costly.
3. There will be an element of supervision, by a costs lawyer and the regulator, to the workplace experience of those candidates under table 3 but not of those candidates under table 2.
4. Those that have completed the academic/vocational qualifications to qualify as a barrister, solicitor of Chartered Legal Executive, but have never been admitted to the professions, may receive less exemptions than those that were admitted into the profession(s).

The proposal is said to improve service to consumers by increasing the choice of authorised and regulated costs lawyers. There is no evidence to support that the introduction of the CLCT will increase the number of regulated costs lawyers. The proposal presents the following concerns in relation to consumer protection and the maintenance of standards:

1. Whilst there may have been some trainees who found training to level 6 onerous it remains the case that all qualification routes to become an authorised person (defined in section 18 of the LSA 2007) require the completion of a level 6 qualification. This proposal removes that requirement.
2. No competence threshold has been defined within the proposal nor has it been made explicit as to how a CLCT qualified costs lawyer will compare to a costs lawyer qualified under the current route.
3. The proposal does not ensure that all candidates will have been assessed in the same subject matters due to the structure of the syllabus and the proposed exemptions. For example, some will have been assessed in civil litigation and others will have only been assessed in some elements of it.
4. The proposal implies that the CLSB aspires to use four test providers, each with responsibility for designing the assessment, this creates doubt as to the consistency of that assessment.
5. The CLSB are proposing that work-based experience is not assessed, there are no requirements to have met particular outcomes through that work experience nor around the suitability of referees.
6. There is no minimum amount of costs work based experience for those that will qualify through the academic qualification route (or those that undertake the test by nature of their professional position).

In relation to assuring standards, the proposal states that the pass mark of the CLCT would be set by reference to contemporary and respected standard setting processes. The proposal contains no detail as to what those processes will be but methods are usually based on the concept of the borderline competent candidate. In order for standards to be set there must be a conceptualisation of the minimum level of knowledge and skills necessary to perform at the point of qualification/regulation. It is the legal remit of the CLSB to set and maintain this standard. The CLSB would need

to ensure that it has defined a 'threshold' against which the standards may be set.

In relation to potential providers, there is insufficient information provided by the CLSB in relation to the criteria they would be looking to identify in providers, for example there is no mention of the need to have a quality assurance policy or an equality and diversity policy both of which it is assumed would be necessary. This element of the proposal needs to be more explicit.

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

No. In its present form the ACL Council cannot agree.

The CLCT as the sole route to qualification would create a barrier to all those that do not work in costs (or that have not worked in costs) that do not hold a legal qualification. This would restrict both horizontal and vertical mobility in to (and out of) the profession. The work experience entry requirement as proposed would also create a barrier to entry for self-employed costs draftsmen with under five years' work experience because they may not have supervision.

The documentation does not set out what 'costs experience' means in terms of expected level/breadth of experience. Additionally, the proposal does not set out how many hours constitute a 'year' nor who would be appropriate to provide a reference for candidates wishing to undertake the CLCT.

Exemptions (or recognition of prior learning) should not be granted because of professional standing but on the basis of prior accredited learning. The exemption policy does not distinguish between a qualifying law degree and non-qualifying degree. Finally, it is not appropriate to grant an exemption from the Tort element of the CLCT (as drafted) on the basis of having completed a law degree because it contains elements of litigation and many law graduates may have no experience of the rules of litigation.

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

No. In its present form the ACL Council cannot agree.

It is unclear how hard the test(s) will be because there is no minimum level qualification entry requirement and the competence level (threshold) is not set out.

No rationale has been provided as to the proposal of using only Single Best Answer Multiple Choice Questions to test knowledge, the SRA propose to use a number of different questioning methods.

ACL do not underestimate the importance of academic knowledge but the role of the

costs lawyer is predominantly advising professional clients in the practical application of costs law and practice in the production of costs pleadings and advice on costs procedures. The proposal lacks relevant skills assessments and the only skills assessment set out therein is to be determined by test providers. The proposal only seeks to test civil costs and does not include areas such as: the Supreme Court, Court of Protection, Criminal and Family. These areas are presently assessed and the indications are that they are relevant and beneficial to the trainee. Inclusion also provides a wider knowledge base for the practitioner.

For and on behalf of the Council of Members of
Association of Costs Lawyers