Dear Sir/Madam

ACL Training Response to the CLSB Consultation: Costs Lawyer Competence Test (CLCT)

This response to the consultation has been prepared by the CEO of ACL Training (ACLT).

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

No. In the present form the principles cannot be agreed.

Within the consultation documents the CLSB have identified eight barriers of entry, whilst no evidence has been provided as to how those barriers have been identified ACLT agrees that unnecessary barriers to entry should be eliminated. In the proposal, the following create barriers to entry:

1. inadequate exemptions for those with prior accredited learning in law; and
2. work based experience entry (WBE) criteria.

When considering the proposal, the Legal Services Board must be assured that it maintains standards in relation to the education and training of persons that will be authorised to undertake reserved legal activities. The current standards ensure that at the point of qualification all trainees:

1. will have been assessed on the same outcomes due to the structure of the syllabus and the exemption policy;
2. will have undertaken a 3-year pre-qualification work experience requirement that will have been assessed; and
3. will have a qualification of level 6 equivalence.

The proposal raises concerns about standards in relation to the education and training of costs lawyers. The structure of the access and standard criteria within the proposal mean that at the point of qualification:

1. the CLSB will not be assured that all trainees have been assessed in the same outcomes;
2. not all trainees will have pre-qualification experience (assessed or otherwise); and
3. the CLSB will not be assured that all candidates have been assessed at level 6.

Presently a threshold statement is used to conceptualise the minimum level of knowledge and skills necessary to perform at the point of qualification/regulation. The CLCT does not contain one nor does it articulate how the standards and assessment compare to the current standards expected of trainees in order to qualify.

The CLCT is said to target the three areas of authorised reserved legal activity under the Legal Services Act 2007; in this regard, there are inaccuracies in the proposal that need correcting. The CLCT is said to introduce a new advocacy test but there are already in place assessments of this nature for trainee costs lawyers. The proposal also suggests the skill of advocacy is not required in legal aid cases, this is wrong. Finally, the proposal fails to recognise that the conduct of litigation requires competency in drafting because there is no proposed assessment of this skill.

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

No. In its present form it cannot be agreed. The proposal lacks sufficient information. There is no explanation as to how the CLSB would ensure the character and suitability requirements are met by candidates at the point of entry. There is also no explanation as to what amounts to WBE or what equates to a year of WBE. For example, there are no clear guidelines as to whether a role undertaken by a candidate, solely as a costs negotiator over the specified period of time in Annex 2 (3 or 5 years), is sufficient to meet the eligibility requirements where they are employed on a part time basis.

The rationale set out within Annex 1 for not assessing WBE is that the Solicitors Regulatory Authority (SRA) reported that it is difficult to do consistently, the SRA regulate a very diverse range of lawyers – far more diverse than those regulated by the CLSB. ACLT currently assess supervised practice and were not approached for input regarding this aspect of the consultation prior to its publication, nor have ACLT reported difficulties with this element of assessment.

Having WBE as an entrance requirement, when it is suggested consistency in assuring equivalence in experience is problematic, may create difficulties for candidates, test providers and other stakeholders. Unless the criteria are very clearly set out it may be difficult to articulate why a decision has been reached. For example, test providers who will be responsible for admittance to the CLCT may refuse an application and a candidate may be unsure why. Additionally, a test provider's accreditation may be dependent on key performance indicators linked to compliance with the CLSB regulations.

The CLCT, as proposed, would create a barrier to all those that do not work in costs (or that have not worked in costs) and that have not studied law before at level 6. So, under the proposal there is no route of entry in to the profession for school leavers. This creates a barrier to qualification because under the present route those not in costs employment, with no prior learning in law, were able to enrol on to the course.

Table 1: Access by legal qualification

The candidates accessing the CLCT under these regulations would not need a period of pre-qualification workplace experience before qualification/regulation. There is no rationale set out in the proposal as to why there appears to be a blanket exemption from this element of the pathway to qualification. This presents a risk to standards. Some of the candidates accessing the CLCT by virtue of Table 1 may have no legal work experience, some may only have worked in non-contentious areas and others may have substantial litigation experience.

It is because qualifications can be compared that it is possible for there to be accreditation of prior learning (APL). APL gives students recognition for previous studies so that there are no periods of repeat study (or assessment), therefore students may be exempted on admission from part of programmes (or assessments) on the basis of qualifications obtained before entry. The exemptions proposed appear to be granted, in some instances, based on professional standing rather than prior accredited learning. This will create inequality in the treatment of candidates. For example, what is the justification in granting more exemptions to a solicitor than somebody who has passed the LPC? As drafted, there is a degree of confusion as to how the exemptions are justified and this needs reviewing.

The content of qualifications is usually expressed by way of a syllabus which includes learning outcomes (LOs) and an indication as to the size of modules (credit values). Qualifications are also usually aligned to a level in order that they can be compared. Annex 2 contains test criteria which can be mapped against the content of prior learning (i.e LOs) but not the level or size of that learning. It is therefore difficult to determine how the list of exemptions has been arrived at. Would, for example, there be any justification in a candidate that has completed A level law or a BA in Business and Law having some exemption(s)? If not, why not?

There are two further areas within the proposed approach to exemptions that require further clarification, firstly the policy does not distinguish between a qualifying law degree and non-qualifying degree. There can be a wide range of variance in the content covered on non-qualifying degrees whereas a qualifying law degree must contain particular modules in order to gain its status. Lastly, the proposal appears to:

1. exempt some candidates from areas they may never have studied or been assessed in; and
2. require the re assessment of some candidates in areas they have studied and been assessed in.

For example, the policy exempts candidates that have a law degree from areas of litigation. Whilst degree providers are starting to embed some litigation elements within their degrees there is no certainty that law graduates will have knowledge of, or have been assessed in, litigation. This presents a risk to standards. The proposal also appears to require those that have been assessed in litigation to be reassessed in some areas, barristers for example will be tested on witness statements and the tracks of the civil courts. This creates a potential barrier to entry.

Table 2 and 3:

The proposal creates a barrier for those self-employed draftsmen (and potentially those working in house) that have not completed 5 years of WBE and that do not have a costs lawyer to supervise them. There are also concerns around standards if the supervising costs lawyer is newly qualified, is it a measure of competence that at the point of qualification a costs lawyer should be capable of supervising others? If it is then this should be made explicit within the assessment criteria.

There appears to be some inequality in the requirements/structure to the WBE in tables 2 and 3. Only table 3 requires candidates to evidence CPD for WBE period and no explanation is provided as to why the requirements are differentiated as they are. Finally, the CLSB applied to the LSB to regulate trainees in 2013 and this application was refused, clarity is therefore required around the CPD requirement and the relationship with the CLSB during that period?

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

No. In its present form it cannot be agreed.

There is no threshold or competence statement within the proposal, the proposal simply refers to 'an acceptable standard of knowledge and skill' and it is unclear what this is and how standards can be assured with no further explanation. In practical terms it is therefore unclear as to how hard the test(s) will be because there is no minimum level qualification entry requirement, the CLCT is not set at a level and it has not been articulated as to how the tests compare to the present qualification route. This means further clarity around the process of setting the pass mark is required in order to be assured that appropriate safeguards to standards will be in place.

The subject matter to be tested needs review, the law of tort part of the assessment includes litigation and the costs content is set only in the context of civil litigation and includes some general areas of litigation as opposed to costs specific subject matter. There is no assessment at all of some subject areas presently assessed, for example; costs in the supreme court, court of protection, tribunals and arbitration.

Part 1

It is unclear as to the weighting of the subjects to be tested, for example part 1(b) contains more statements about what will be tested than part 1(a), does this mean there would be more questions in part 1(b), how is it proposed this would work in practice?

The proposal suggests that only Single Best Answer Multiple Choice Questions will be used to test knowledge save for the oral practical skills assessment. This is justified on the proposal made by the SRA but does not acknowledge the SRA propose to use a number of different questioning methods and skills assessments.

Part 2 (Practical Test)

It is proposed that the practical test would be designed by the test provider(s) to assess the skill of advocacy and the knowledge set out as indicated in the table. There is no information in the proposal as to how the CLSB would ensure standards between assessments. There is also no explanation as to how the proposed test aligns to the current assessment of trainees.

One concern is how an oral assessment of candidate's knowledge will ensure candidates are able to draft pleadings, which is an essential skill for those conducting litigation. The current qualification assesses tasks such as drafting a precedent, preparing a costs pleading, writing a letter to a solicitor client, analysing a time sheet (identifying missing, incomplete and vague information) and preparing bills of costs. These tasks were deemed, during the 2017 annual audit, to be set at the right level and align to the relevant outcomes. The relationship between the assessments needs to be made explicit to ensure standards are maintained.

Yours faithfully,

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