



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Costs Lawyer Standards Board (CLSB) rule change application for approval of alterations to Practising Rule 10.1 (Indemnity Insurance)

The Legal Services Board (LSB) has granted an application from the CLSB for approval of alterations to the CLSB's Practising Rule 10.1 (Indemnity Insurance). The revised rule is annexed to this decision notice and sets out the arrangements that will come into force on the date of this decision notice.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Association of Costs Lawyers (ACL) is an approved regulator and CLSB is the regulatory arm to which ACL has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed alteration to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made, including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Proposed changes

5. The CLSB's application sought approval of a revision to its practising rule about indemnity insurance. The changes will make it a requirement for costs lawyers to assess, on an ongoing basis, the financial risks of the work being undertaken by them. All costs lawyers will also need to ensure that they practise with the benefit of adequate professional indemnity insurance with at least the minimum required level of cover of £100,000. The revision also makes the rule applicable to all costs lawyers, irrespective of where they work.

Decision

6. During its review of the application, the LSB considered CLSB's approach to monitoring and supervision in light of this change to requirements. In particular, the LSB wanted to understand how CLSB will ensure that there is compliance with the revised rule. CLSB explained that it only issues practising certificates when it receives evidence of the professional indemnity insurance held by a costs lawyer and that it will continue to work with the main broker for the market to evaluate insurance claims and policy values. The LSB is satisfied with CLSB's plans for monitoring the change and expects that these will inform its approach to supervision.
7. In the consultation response document, CLSB stated that it "has been led to believe the LSB would not allow any increase of the minimum..." To clarify, the LSB's concern was not whether there should be an increase in the minimum level of cover but whether there was sufficient evidence to justify the introduction of additional regulation. To inform the application, CLSB sought the advice of a specialist broker, which suggested a larger influx of claims and notifications. In addition, the application provides an analysis of professional indemnity insurance cover currently in place. The LSB is satisfied that this demonstrates some of the steps that have been taken to provide evidence to support the change.
8. The LSB noted comments in the consultation response report about run-off cover insurance. This has never been a requirement for CLSB regulated costs lawyers and it is not the subject of the application. While the LSB recognises this and that run-off cover is not always an appropriate requirement for businesses, we do have some concerns about clients being left with no means of redress in the event of a claim being made after a costs lawyer has retired or gone out of business. LSB will explore this further with CLSB in the light of its experience of those firms and individuals who leave the market at the time of the 2014 and 2015 practising certificate renewal rounds.

9. The LSB has considered CLSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
10. The Annex to this decision notice contains the rule change approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from CLSB on 19 March 2014.
- The 28 day initial decision period for considering the application ends on 15 April 2014.
- This decision notice is effective from and is being issued to CLSB on 9 April 2014.
- The decision notice will be published on our website on 10 April 2014.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
9 April 2014

Annex

RULE 10.1: Indemnity insurance

10.1 Costs Lawyers shall ensure that they:

(a) practice with the benefit of professional indemnity insurance of a minimum £100,000 (any one claim) to include loss of documents; and

(b) on an ongoing basis, assess all financial risk associated with work being undertaken by them and ensure that professional indemnity insurance and loss of documents insurance is in place in excess of the minimum set out in rule 10.1(a) at a level commensurate with that work.