

**Application to the Legal Services Board  
S.20, Schedule 4, Part 3 of the Legal Services Act 2007**

**Applicant:** Costs Lawyer Standards Board  
**Purpose:** Approval of new route to qualification as a Costs Lawyer under Costs Lawyer competence assessment  
**Date:** 26 January 2019

**1. Abbreviations**

ACL	Association of Costs Lawyers
CLCA	Costs Lawyer Competence Assessment
CLCT	Costs Lawyer Competence Test (name by which the CLCA was initially referred to)
CLSB	Costs Lawyer Standards Board
LSA	Legal Services Act 2007
LSB	Legal Services Board
MCT	Multiple choice test

**2. Attachments**

Proposed Costs Lawyer Competence Assessment Handbook with Annex 1-10 inclusive, ACL response and SRA response.

**3. This application**

It is the role of the CLSB to encourage a strong and diverse Costs Lawyer profession as well as ensuring high standards of service. There is only one means of entry into the profession, a prescriptive three-year education program leading to qualification offered by one provider. The CLSB is of the view this creates several barriers, for example:

- (i) lack of choice on learning methods; and
- (ii) lack of flexibility on time taken to qualify; and
- (iii) lack of flexibility on the cost of qualifying; and
- (iv) it is too onerous on an “earn and learn basis” and therefore likely unattractive to the longer serving costs law practitioners; and
- (v) it does not offer adequate exemptions for cross qualification for those whose knowledge and skills have already been assessed under another legal qualification; and
- (vi) the minimum age for commencing the qualification was revised from 16 to 18 following a request by the provider due to the law on educating minors; and
- (vii) minimum education standards on applying to commence the qualification were applicable.

This application seeks to address those barriers. The ACL, the representative body of the Costs Lawyer profession, has estimated there may be as many as 4,000 costs law practitioners (Costs Draftsmen) offering legal costs services to the public. The current means of entry into the Costs Lawyer profession appears to have been unattractive to them, less so over the last three years as the cost of that means of entry also increased. As a result, they

practice without any form of costs law and practice assessment. Further, unless they work for a regulated firm, they practice outside of regulation. The view of the CLSB is that this is not good for public confidence and consumer protection.

The CLSB mooted an alternative means of entry back in February 2017 under a proposed Costs Lawyer Competence Test (CLCT). This was later changed to being a Costs Lawyer Competence Assessment (CLCA). The proposed CLCA would offer a flexible and less expensive means of entry. It would enable a candidate to evidence they have achieved knowledge and competence criteria through a variety of routes at a pace that suits them, thus increasing diversity in the profession. It offers greater opportunity to qualify. With qualification comes the opportunity for regulation. Both qualification and regulation afford greater consumer protection.

By undertaking this review, and drafting the proposed CLCA, the CLSB has had the opportunity to target assessment criteria against the reserved legal activity rights of a Costs Lawyer under the Legal Services Act 2007, the seven principles of regulation and LSB guidance on education and training (dated March 2014).

#### **4. The need for change**

When the CLSB became an approved regulator under delegated authority on 31 October 2011, there was one prescriptive three-year study program in place by means of entry, with one provider. That arrangement continues to this day. The arrangement offered no choice of provider, no competition/choice on price of qualifying and little flexibility. Over the last few academic years, this means of entry to the profession has fallen out of favour with those seeking to enter the profession and numbers looking to qualify via this route have dropped significantly. As a result, the CLSB has invested considerable time and resource in researching an approach to modernise the means of entry, in line with LSB published goals and guidance. The CLSB is aware the Solicitors Regulation Authority and Bar Standards Board are likewise investing time and resource on similar projects evidencing the CLSB is acting in step with other approved regulators.

#### **5. One stage approval**

This application is put before the LSB as a one stage approval request. Following advice from ACL that the current three-year qualification had become financially unviable, the CLSB took action by suspending entry on 1 November 2017 to protect trainees from contracting onto a three-year course when no reassurance could be given to the CLSB it could be honoured to completion. At present, the profession is without a means of entry. In the event of approval, the CLSB will then have a definitive product upon which interested providers can present their proposals to the CLSB on delivery. Due to the small size of the profession and numbers involved, it is intended there will be only one assessment provider. That provider will be selected by the CLSB under the process set out herein.

#### **6. Regulatory arrangements**

Under the LSA the ACL is the appointed approved regulator. As it is a requirement under the LSA that representation and regulation are independent of each other, on 31 October 2011 the CLSB took on the role of approved regulator of the Costs Lawyer profession under

delegated authority of the ACL. On that date the ACL and CLSB signed a memorandum of understanding and operational protocol which states the CLSB will:

- (i) Set required training standards to qualify as a Costs lawyer (training & CPD rules).
- (ii) Accredite the providers of training to Trainee Costs Lawyers and will review this accreditation on a needs-be basis.
- (iii) Set entry level qualification requirements.
- (iv) Approve any changes to the entry examination.
- (v) Consider the appropriateness of the modular syllabus and other examinations e.g. entry level, formal examination.
- (vi) Approve any changes to the modular syllabus and final examination.

## **7. Objectives of this reform**

- (i) To re-align the education and training system to an outcome focussed model, ensuring that those who deliver costs law services as a Costs Lawyer meet CLSB set standards with less emphasis on the process used to achieve qualified Costs Lawyer status.
- (ii) In doing this, introducing flexibility, choice, innovation and efficient ways of achieving the necessary outcomes.
- (iii) To target our activities as an approved regulator on protecting the public interest, including consumer interests, in a proportionate manner.

The CLSB believes that a means of entry system which focuses on the outcomes to be achieved rather than structures and processes will have a positive impact on the quality of the costs law services provided, and will increase the number of qualified and regulated costs law practitioners.

## **8. Engagement**

During this process, the CLSB has consulted and engaged as set out below. The CLSB is aware that it is human nature to resist change for reasons such as uncertainty, perceived loss of control and the simple fact that people find comfort in the familiar. As identified in the Harvard Business Review *“leadership is about change .... resistance to change manifests itself in many ways, from foot-dragging and inertia to petty sabotage to outright rebellions.”*

Where comment has been made or an objection has been raised during the engagement process set out below, consideration has been given where that comment or objection has been explained rather than a simple knee jerk “no” reaction. As a result of this process, the proposal has changed significantly from where it first started in February 2017, evidencing that the CLSB has listened and has made change where considered appropriate.

### **(i) Consultation 1**

On 1 February 2017, the CLSB issued a three-part consultation paper on education and training. Under part 3 of that consultation, the CLSB took the opportunity to moot the potential for a new means of entry into the profession via multiple choice testing (MCT).

The consultation ran for 11 weeks and two days closing on 21 April 2017. It was sent to key stakeholders and a news item was posted on the CLSB website with a link to the

consultation papers. Responses were received from Costs Lawyers, the ACL Student Council and ACL Training.

Under the consultation, the CLSB explained that it sought to remove barriers to entry for those who have significant experience in costs law and practice who can evidence the necessary knowledge and skills have been achieved through that experience. It reassured that the new test would be the equivalent in terms of demand to the current Costs Lawyer qualification. The CLSB set out its view that *“The consumers of legal costs services are best served if all/a greater number of practitioners have demonstrated their competence to act, and are regulated”*.

The proposal also raised the prospect of MCT, thus removing the personal opinion of an examination marker of an essay answer. Under MCT an answer is either right or wrong. The CLSB is of the view MCT would ensure consistency of standard and approach as well as ensuring fairness, thus producing objectively justifiable results.

A well-designed set of multiple-choice questions provide reliable and objective indicators of a candidate’s ability. For this reason, they are used increasingly in a range of high-stakes tests across a number of professions including medicine, law (NY Bar Exam, the SRA’s Qualified Lawyers Transfer Scheme) and accountancy. Over recent years, there has been considerable work on designing robust multiple-choice questions which test a candidate’s higher abilities: not just knowledge and understanding, but also a candidate’s abilities to evaluate and analyse. MCTs also allow test-setters to sample a candidate’s knowledge and understanding of a vast syllabus without requiring the candidate to undertake multiple assessments over a prolonged period.

Under part 3 of the consultation, the CLSB posed three questions:

**Question 1: To what extent do you agree with our proposal for a Costs Lawyer Competent Test (CLCT)?**

Outcome

Strongly agree	7	32% of respondents
Agree	6	27% of respondents
Neither agree nor disagree	2	9% of respondents
Disagree	-	-
Strongly disagree	7	32% of respondents

The majority of respondents (59%) agreed with the proposal. The following points were raised:

- The CLCT will provide a route for experienced practitioners to enter the regulated profession.  
CLSB comment: Agreed.
- Would multiple choice testing adequately test a candidate’s knowledge and understanding?

CLSB comment: Yes, it would be for the provider to set the assessment against the threshold standard, and this would be subject to annual audit by the CLSB.

- Will there be checks on a candidate’s suitability to enter the regulated profession?  
CLSB comment: Yes, a candidate would be made aware of suitability criteria, and this has been addressed in the CLCA Handbook presented under this application.
- There should be study and training options for candidates wanting to take the CLCT.  
CLSB comment: Agreed, and this is what is proposed. A candidate will be able to choose how and from where they acquire the requisite knowledge and skills e.g. training provider, on-line learning, books and on the job experience.

**Question 2: To what extent do you agree with our proposed criteria that a minimum of 10 years of experience in costs law and practice to be proven before a candidate can apply to sit the CLCT?**

Outcome

Strongly agree	9	41% of respondents
Agree	4	18% of respondents
Neither agree nor disagree	-	-
Disagree	-	-
Strongly disagree	9	41% of respondents

A majority of respondents (59%) agreed with the proposal, however it was suggested the minimum period of experience be less than 10 years. As a result, further consideration was subsequently given to work-based experience, predominantly at the working party group made up of Costs Lawyers (see below), and as a result the period was significantly reduced. The view was that if a candidate was able to evidence that they had achieved requisite skill and experience, how and over what period this was achieved is irrelevant.

**Question 3: To what extent do you agree that the CLCT is a multiple-choice option?**

Outcome

Strongly agree	4	19% of respondents
Agree	5	24% of respondents
Neither agree nor disagree	3	14% of respondents
Disagree	1	5% of respondents
Strongly disagree	8	38% of respondents

There was a 50/50 split between those who agreed and disagreed with this proposal. Comments raised were:

- Is an MCT sufficiently rigorous?  
CLSB comment: It will be for the test provider to ensure that it is, and this will be subject to annual independent audit by the CLSB.

- Will there be exemptions for candidates who have already passed the LPC, BPTC or other legal qualifications?  
CLSB comment: Yes, the proposed CLCA Handbook includes an annex which identifies where exemptions will be provided. The CLSB has consulted with fellow approved regulators on those proposed exemptions to ensure they are just, equitable and consistent throughout the legal professions.

The CLSB was not surprised by the split view on MCT, it is a major step change from traditional assessment mechanisms. It is however, now an accepted method of assessing whether a candidate has the required knowledge. It removes personal opinion from the assessment process providing greater consistency on the outcome. MCT is only proposed for parts 1 and 2 of the CLCA, these parts make up the legal knowledge aspect. Candidates may be exempted from part 1, but part 2 will be compulsory (save for those few who have part completed the current Costs Lawyer qualification).

(ii) Consultation 2

At this point, having undertaken further work on the proposal, a second consultation paper was issued on 30 April 2018 under which access was proposed via a Costs Lawyer Competence Test. The closing date for consultation responses was 22 June 2018.

The three questions asked were:

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

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

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

Outcome

	Yes	No
Q1	16: 44.4% of respondents to Q1	20: 55.6% of respondents to Q1
Q2	12: 36.4% of respondents to Q2	21: 63.6% of respondents to Q2
Q3	11: 45.8% of respondents to Q3	13: 54.2% of respondents to Q3

The CLSB was of the view this consultation outcome was skewed and cannot be relied upon. ACL Training, without approval of the CLSB, had suggested a 2-year prescriptive qualification in a newsletter to all ACL members on 7 June 2018, 2 weeks before this CLSB consultation closed. This indicated a choice, which confused. The CLSB had communicated it was working on an outcomes focused means of entry, moving away from the historical prescriptive education model means of entry.

(iii) Snapshot survey

During consultation 2, it was suggested the drafting of pleadings and process documentation be tested. This raised the question as to how much advocacy Costs Lawyers actually undertake. One Costs Lawyer commented *“The implementation of provisional assessment and the reduction of costs/case management conference hearings means that there is a much smaller need for Costs Lawyer advocacy than there has been in previous years.”*

On 30 June 2018, a one-week snap shot survey was undertaken to establish what percentage drafting and advocacy comprised a Costs Lawyers work. 111 Costs Lawyers responded representing 1/6<sup>th</sup> of the regulated profession. The outcome evidenced that 19.09% (average) advised they undertook no advocacy.

- 86.55% (average) comprised of drafting proceedings and procedural documents.
- 8.7% (average) comprised of advocacy.

To ensure the assessment process and qualifying criteria are proportionate and targeted the CLSB revised its proposal to include a practical test on drafting pleadings and procedural documents under part 3, with a training day on advocacy under part 4.

(iv) Input from the profession on what we proposed to assess

On 25 June 2018, the CLSB issued an email to all Costs Lawyers asking them to input into what was proposed to be assessed. The email read: *Further to our recent consultation paper on a proposed Costs Lawyer Competence Test, we would very much appreciate your input into what we propose to test. From your own personal experience of qualifying and practising what do you believe should/should not be tested? Is the emphasis right? By way of a response, please endorse any suggested additions, deletions etc. on the attached using track changes to enable us to easily identify your suggestions.*

Following responses, parts 1 to 5 inclusive were reconsidered and revised.

(v) Consulting on exemptions

On 8 August 2018, the proposed exemption table was sent to the following approved regulators to enable them to comment on whether they considered proposed exemptions for their respective professions appropriate:

<b>Profession/qualification</b>	<b>AR</b>	<b>Commented on</b>
Barrister	BSB	15 August 2018
Solicitor	SRA	No response
Legal Executive	ILEx Regulation	13 August 2018
Patent Attorney	IpReg	22 August 2018
Trade Mark Attorney	IpReg	22 August 2018
Licenced conveyancer	CLC	13 August 2018
Probate practitioner	CLC	13 August 2018
Notary	MoF	No response

Following responses, the exemption table was reconsidered and revised.

(vi) Working party

On 30 August 2018, the CLSB convened a working party made up of Costs Lawyers, a Trainee Costs Lawyer and a legal education specialist to work through the proposal as it stood at that date. The day was spent considering each part of the proposed CLCA Handbook and the outcome of debate informed yet further change.

(vii) Costs Lawyer legal aid group input

On 2 October 2018, the two new Co-Chairs of the Costs Lawyer Legal Aid Group were asked to input into the proposed syllabus under legal aid. Slight amendments were made to the proposed assessment criteria on legal aid as a result.

(viii) Final consultation

On 24 October 2018, the CLSB consulted on the version of the CLCA as it stood at that time following the history of consultation and work undertaken since February 2017 set out above. The consultation was issued to all Costs Lawyers and the ACL and closed at 5pm on 21 November 2018. Seven responses were received, one supported the CLCA fully, the others raised issues. Those issues had however already been raised and considered under previous consultations, and as a result did not inform any change to the proposed CLCA.

The ACL also responded, in brief:

*“This response primarily focusses upon the implications of the current proposal on status and standards of Costs Lawyers, which the ACL seeks to maintain and further.”*

CLSB comment: The maintenance and furthering of standards rests with the CLSB under its delegated authority with the assistance of the LSB (s4 LSA). There is also a need for balance and proportionality as the LSA places other statutory obligations on both the CLSB and LSB such as a duty to protect the consumer. Indeed, the eight regulatory objectives set out under S.1 of the LSA are entirely consumer focused. Thus, the focus of the LSB is not on protecting the profession but protecting the consumer. Maintaining standards is important to ensure consumer protection and confidence, an outcomes-based approach in itself is perfectly compatible with these objectives.

*“The ACL is concerned that the proposal lowers the standards expected of Costs Lawyers at the point of entry”*

CLSB comment: Nothing in the proposal indicates that this will be the case, and the ACL failed to back this statement up with evidence of lowered standards. There is no evidence that a change to an outcomes-based qualification (rather than process driven qualification) bears an inherent risk of lowering the standards expected. An outcomes-based approach has benefits e.g. opening doors on new ways of training and recognising experiential learning, encouraging more candidates and greater diversity.

The ACL objected to the threshold standards, alleging that they would lower standards and referred to the current standards statement for Costs Lawyers.

CLSB comment: The standards statement the ACL refers to was not written by the CLSB but by ACL Training. The aims and objectives of the qualification set by the CLSB having followed due process under the LSA were set out under training rules dated 31 October 2011:

- a) Obtain general knowledge of each area of law studied.

- b) Achieve detailed knowledge of the law and procedures relating to the costs subject studied.
- c) Develop skills of legal analysis particularly in relation to costs law and practice.
- d) Reach a high level of competency and performance.
- e) Learn valuable transferable skills.

The proposed threshold standard under the CLCA follows that of the profession of a Barrister and is therefore considered adequate and proportionate for the profession of the Costs Lawyer in terms of “day one” outcomes.

A Costs Lawyer will:

- (i) Always perform to an acceptable (satisfactory) standard, fit for purpose though not necessarily outstanding or perfect.
- (ii) Always achieve a standard of service that is appropriate to the purpose for which they have been instructed.
- (iii) Be able to deal with straightforward or uncomplicated or familiar work unaided.
- (iv) Ask for support when it is needed in order to complete complex or unfamiliar work.

*“The proposal permits work-based experience but has appeared to remove the learning element for this element.”*

CLSB comment: Under an outcomes-based approach, there is no need to specify a learning process. The qualifying work experience is for a period of 24 months. In order for a candidate to complete the CLCA a certificate of completion under part 5, which sets out a comprehensive list of skills and competence is required. That certificate can only be signed off by an independent person, not the candidate themselves. It should further be noted that legal knowledge is to be adequately tested under part 1 and part 2, with a practical drafting assessment under part 3. Save for those who have achieved part qualification on the three-year Costs Lawyer qualification, no candidate is being permitted an exemption to parts 2 and 3 which promotes a level playing field whilst maintaining standards.

*“Nowhere in the proposal is it explained how qualifying Costs Lawyers are to gain this knowledge or to what level”*

CLSB comment: With regard to the first part of the statement, relating to how knowledge is gained, this is deliberate. In an outcomes-based system it is inappropriate to prescribe how candidates should gain the knowledge, skills and attributes necessary to meet the standard. Indeed, the very point of the proposal is that, by not dictating process, this creates opportunities for new and innovative training to be introduced. With regard to the second part of this statement, it simply is not correct. As the CLCA shows, a candidate will only achieve qualification via the CLCA if the candidate achieves the threshold standard.

## 9. The proposed way forward

Following the full consultation/engagement process set out above, the proposal is now set before the LSB under this application for approval. The attached document (CLCA Handbook) sets out how the CLCA will operate in practice.

### (i) Assessment overview

Part 1	1 x multiple choice test	Legal knowledge (assessed)	<ul style="list-style-type: none"><li>• The legal system of England &amp; Wales</li><li>• Law of contract</li><li>• Law of tort</li></ul>
Part 2	1 x multiple choice test	Legal knowledge (assessed)	<ul style="list-style-type: none"><li>• Ethics, professional conduct &amp; regulation</li><li>• Civil procedure rules</li><li>• Legal costs</li><li>• Funding (legal aid)</li><li>• Funding (other)</li></ul>
Part 3	1 x practical test	Legal drafting (assessed)	Drafting pleading & procedural documents
Part 4	1 x 1 day training course	Oral advocacy (training)	Oral advocacy
Part 5	Not less than 24 months in legal practice	Qualifying work experience (assessed by way of sign off)	Work based exposure to clients, managing client expectations and ethical problems in practice

### (ii) Competence

The CLCA adopts the broad definition of competence as being “*the ability to perform the roles and tasks required by one’s job to the expected standard*” (Eraut & du Boulay, 2011). This recognises that requirements and expectations change depending on the job role and context. It also recognises that competence develops, and that an individual may work “competently” at many different levels, either at different stages of their career or indeed from one day to the next, depending on the nature of their work.

### (iii) Threshold standard

Based on the adopted definition of competence above, the four-point threshold standard below sets out the knowledge and skills that a Costs Lawyer will have on “day one” of authorised practice as a Costs Lawyer i.e. upon issue of a Costs Lawyer practising certificate by the CLSB.

A Costs Lawyer will:

- (i) Always perform to an acceptable (satisfactory) standard, fit for purpose though not necessarily outstanding or perfect.
- (ii) Always achieve a standard of service that is appropriate to the purpose for which they have been instructed.
- (iii) Be able to deal with straightforward or uncomplicated or familiar work unaided.

(iv) Ask for support when it is needed in order to complete complex or unfamiliar work.

(iv) Character & suitability

The CLSB cannot legally prevent anyone from embarking on achieving skills and experience in costs law and practice with a view to achieving Costs Lawyer status. The proposed CLCA Handbook states: *“There are no character and suitability requirements. However, a Candidate is advised that the CLSB assesses character and suitability when a Costs Lawyer applies to become authorised and regulated by the CLSB under the Legal Services Act 2007 (Costs Lawyer practising certificate). Therefore, before starting the CLCA it is suggested that a Candidate considers these requirements. If a Candidate is unsure about the assessment of character and suitability before commencing the CLCA or during the CLCA, the Candidate is advised to contact the CLSB at [enquiries@clsb.info](mailto:enquiries@clsb.info) for clarification on the impact of this as a positive answer is not always a bar to a practising certificate being issued.”*

**10. Change to age**

When the CLSB took on the role of approved regulator back in October 2011, rule 1 of its training rules stated *“the minimum age for a Trainee Costs Lawyer is 16.”* Under an audit process of provision of the qualification by ACL Training, the CLSB became aware that without consultation or discussion with the CLSB, ACL Training had changed that to being age 18. When the question was asked why this was, they advised it was due to vetting procedures that were required for the education of those under the age of 18. The CLSB took action to revise this rule to age 18 and the LSB approved it.

The CLCA has been drafted to move candidates away from a prescriptive education model with tutoring. Instead, the vision is that the provider will be undertaking the assessment process and offering candidates the ability to purchase training material and services e.g. advocacy training day and so the age restriction of 18 should not apply. If the LSB disagrees, then the CLSB has no real issue on it remaining at age 18 as at the time of our application to change the rule from age 16 to 18, ACL Training advised they had not received any applications from those under age 18. So, whilst a barrier would be removed should the age be reduced to 16, the impact of it remaining at age 18 would be insignificant. The CLSB could not however see any justification to deny a candidate the opportunity to commence completion of part 5.

**11. Transitional arrangements**

Based on information received, and following due diligence and duty of care principles, on 1 November 2017 the CLSB made the difficult decision to suspend further entry onto the three-year Costs lawyer qualification. The ACL had given the CLSB an assurance that for trainees who had commenced the three-year qualification course, arrangements would be safeguarded to enable them to complete the qualification. In relation to anyone who does not complete the three-year qualification for any reason, the exemptions proposed would enable them to transfer over onto the CLCA.

**12. Why the CLCA is appropriate based on regulatory objectives**

***Protecting & promoting the public interest***

***Protecting and promoting the interests of consumers***

The proposal is aimed at increasing the number of candidates for the Costs Lawyer qualification and will thus provide the consumer with greater choice of access to qualified and regulated legal costs professionals, who:

- (i) have proven to the CLSB that they have attained a set standard, and
- (ii) undertake continuing professional development; and
- (iii) have evidenced to the CLSB they have insurance in place; and
- (iv) have evidenced to the CLSB they have a complaints procedure in place; and
- (v) offer recourse to the Legal Ombudsman on service complaints; and
- (vi) offer recourse to the CLSB on professional conduct complaints.

#### ***Supporting the constitutional principle of the rule of law***

The CLCA will provide a consistent means of assessing knowledge and skill to ensure Costs Lawyers are competent across the remit of their services thus supporting the principle of the rule of law.

#### ***Improving access to justice***

##### ***Promoting competition in the provision of legal services***

More qualified and regulated Costs Lawyers would improve access to justice and would drive competition, therefore affording the consumer greater choice.

##### ***Encouraging an independent, strong and divers and effective legal profession***

The CLCA is intended to be a robust and consistent assessment mechanism, removing barriers to entry. It would serve to strengthen the profession, and it is hoped that in time there will be more regulated Costs Lawyers than unregulated Law Costs Draftsmen/Costs Draftsmen, not the other way around. The flexibility of approach to achieving skills and knowledge will open the qualification up to a broader section of society, who can achieve the CLCA whilst working to support themselves.

##### ***Increasing public understanding of the citizens legal rights and duties***

The objective of this proposal is not aimed at this regulatory objective, but neither should it be detrimental to it. An increased number of authorised and regulated Costs Lawyers would afford the consumer greater access to specialist costs law services thus improving their understanding of their legal rights and duties.

##### ***Promoting and maintaining adherence to the professional principles***

The CLCA includes a mandatory section on professional ethics under part 2. No exemptions have been proposed for part 2, save for a candidate who has achieved prior part qualification on the three-year Costs Lawyer qualification.

### **13. Why the CLCA is appropriate based on better regulation principles**

This application follows the principles set out under S.28 (3) of the LSA.

#### **(i) Proportionality**

Following consultation, the CLSB believes the CLCA to be a proportionate approach to means of access to the profession with appropriate exemptions being available for those who already have some form of legal qualification.

(ii) Accountability

The CLSB has historically commissioned an independent annual audit of the service and outcomes of its accredited training provider. That audit was never standard, but targeted and tailored to ensure it was effective and gave required levels of information and assurance. The independent auditor commissioned by the CLSB was highly experienced in the provision of legal education. The outcome of that audit then formed the basis of further accreditation of the training provider. This process enabled the CLSB to maintain an oversight role on standards and the CLSB proposes the same accountability mechanism for the provider of the CLCA.

(iii) Consistency

The CLCA will ensure consistency as the MCT removes personal opinion from the assessment process and provides for a more level playing field.

(iv) Transparency

The CLCA Handbook was written with the aim of being a fully comprehensive document on how the assessment scheme will work, what is expected of a candidate in terms of knowledge, skill, work-based experience and suitability. It is proposed the CLCA Handbook will appear under the study section of the CLSB website.

(v) Targeted

By removing the historical prescriptive over-arching study programme, the CLSB has been able to target standards against regulatory principles and reserved legal activities afforded a Costs Lawyer authorised by the CLSB.

**14. Alignment with LSB guidance (March 2014)**

Outcome 1: Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation	
a. Requirements may be role or activity specific, with certain universal requirements being consistent regardless of regulator. These universal requirements may focus on areas such as professional principles and ethics	The proposed CLCA has universal requirements consistent with other regulators. More particularly, Part 1 covers core legal principles, Part 4 advocacy. Part 3 covers professional principles and ethics. Parts 2 and 3 and 4 and 5 cover universal requirements in the legal profession as well as matters relevant only to Costs Lawyers.
b. Regulators move away from 'time served' models that focus predominantly on inputs rather than outcomes as a default position when students are acting under the supervision of a qualified person and in many cases within a regulated entity	The CLCA has a requirement for work-based experience at Part 5. This is entirely outcomes-focused and is proved by a third-party certificate. This certificate lists the skills achieved by the candidate at the time of conclusion. The CLCA provides flexibility as to how the work-based experience is to

	be achieved and allows for it to be gained in up to four organisations, over a period of five years.
c. Requirements exist only where needed to mitigate risks posed by the provision of a legal activity. We would therefore expect regulators to review their approach to the regulation of students. It is difficult to see how the regulatory burdens and costs involved can be justified	The CLSB does not regulate trainees/students/candidates. It made an application to the LSB to do so in 2012 but it was refused.
d. Regulators act to facilitate easier movement between the professions, during training, at the point of qualification and beyond	The CLSB consulted with the profession before drafting the new CLCA. This flexibility was seen to be very important to the profession, and the CLSB has taken care to include this flexibility wherever possible in the new CLCA. As such, the CLCA is divided into five distinct parts. This makes it easier for other regulators to consider a candidate for exemptions towards other legal qualifications. Focusing on the threshold level at qualification stage, rather than the pathway to get there, leaves a candidate free to choose the pathway and the timing of achievement of the five parts of the CLCA.
e. Regulators review requirements regularly to ensure that education and training stays current and relevant to modern practice	In the event of implementation of the CLCA, the CLSB proposes to continue to monitor standards, effectiveness (numbers applying and numbers qualifying) on an on-going basis via its annual independent education audit mechanism. It will also monitor, under its supervision arrangements, whether those qualifying via the CLCA pose any greater risk to the consumer than a Costs Lawyer who has qualified via other historical means of entry.

Outcome 2: Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required

a. Approval of education and training routes is dependent on providers' ability to	The CLCA has not yet been approved by the LSB. Until it is, the CLSB is unable to invite
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<p>demonstrate how their approach enables candidates to achieve the required outcomes</p>	<p>interested providers to present their proposals. The CLCA has been drafted to provide for flexibility on how they achieve the required outcomes. The provider will assess achievement. The provider will however also be expected to provide support on achieving outcomes e.g. training material.</p>
<p>b. Regulators take care not to predetermine approval by prescribing particular routes</p>	<p>One of the purpose of the CLCA is to move away from a prescriptive route of entry into the profession.</p>
<p>c. Multiple routes to authorisation are able to emerge, with no one route being the 'gold standard'</p>	<p>See answer to 2(b) above. No one route will be a 'gold standard'.</p>
<p>d. Approval processes for new routes to authorisation support providers in their delivery of the required education and training outcomes and do not put in place unnecessary obstacles (for example, not requiring burdensome authorisation and reporting requirements, repeated waivers or exemptions from regulators)</p>	<p>See answer to 2 (a) above. The CLSB notes this requirement and does not intend to put unnecessary obstacles before the provider.</p>
<p>e. Regulators complement rather than duplicate existing quality assurance processes such as those undertaken by higher education institutions themselves and those carried out by the Quality Assurance Agency (QAA). We would expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made.</p>	<p>The CLSB has historically commissioned an independent annual audit of the service and outcomes of its accredited training provider. That audit was never standard, but targeted and tailored to ensure it was effective and gave required levels of information and assurance. The independent auditor commissioned by the CLSB was highly experienced in the provision of legal education. The outcome of that audit then formed the basis of further accreditation of the training provider. This process enabled the CLSB to maintain an oversight role on standards and the CLSB proposes the same accountability mechanism on the provider of the CLCA. However, it will keep this quality assurance process under review, and make changes as and when they become appropriate in order to achieve the outcomes required by the LSB.</p>

Outcome 3: Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements	
a. Education and training requirements should be set at the minimum level at which an individual is deemed competent for the activity or activities they are authorised to do	This is achieved through the definition of the 'threshold standard' which is identified in the proposed CLCA as follows: On day one, a Costs Lawyer will: (i) Always perform to an acceptable (satisfactory) standard, fit for purpose though not necessarily outstanding or perfect. (ii) Always achieve a standard of service that is appropriate to the purpose for which they have been instructed. (iii) Be able to deal with straightforward or uncomplicated or familiar work unaided. (iv) Ask for support when it is needed in order to complete complex or unfamiliar work.
b. Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an ongoing review cycle with strong links to regulatory supervision functions.	The CLSB adopts a risk-based, proportionate approach to regulation. As set out above, the qualification will be independently audited, monitored and reviewed by CLSB. In the event any risk is identified in relation to education and training, this will be recorded and monitored by the CLSB board.
c. The balance between initial and ongoing requirements for education and training should be determined in accordance with the risks posed by that activity	Again, this will be achieved through the annual audit, review and monitoring arrangements.
d. Regulators should consider whether broad based knowledge of all areas of law needs to be a prerequisite for authorisation in all areas. For example, there may be areas where the risks allow for authorisation in a specific activity and a broad base of knowledge is not necessary	This consideration has taken place in creating the CLCA. The CLSB undertook a robust process to create the new CLCA and considering whether each reserved activity requires a broad-based knowledge of all areas of law.
e. On the job training is utilised where knowledge can be obtained effectively in this way rather than requiring all	This is dealt with in(3c) above.

knowledge to be obtained before authorisation	
f. Continuing Professional Development (CPD) participants are required to plan, implement, evaluate and reflect annually on their training needs. A robust approach to monitoring is developed and aligned or integrated with existing supervision functions	CPD comes into effect after the CLCA has been completed and does not form part of this application.
g. Regulators are risk based in relation to reaccreditation and make a clear assessment about its use. Significant risk based requirements at the point of authorisation are likely to indicate sufficient risk to require some form of reaccreditation. However, this does not mean that wherever there is an initial requirement this must be duplicated at a later date.	The CLSB adopts a risk-based and proportionate approach to regulation. This risk-based approach will be adopted towards the appointment of a provider and to their re-accreditation.

Outcome 4: Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and ongoing	
a. Regulators move towards obtaining assurance from entities that day-to-day competency requirements are being met. This means a shift away from low risk decisions (e.g. about staff secondments) being made by regulators themselves	Not applicable as CLSB does not regulate entities.
b. When authorising an entity to provide reserved legal activities, regulators focus on ensuring the appropriate controls and supervision arrangements are in place to ensure the competence of all those employed to provide legal services and not only those with professional titles. For the avoidance of doubt, we do not see that a licensing regime for individual paralegals is needed in the context of entity regulation	
c. The systems and processes required of entities vary depending on the business model or nature of the services provided,	

and to whom services are provided. For example, we would expect regulators to take account of the proportion of reserved and unreserved services being provided	
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Outcome 5: Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession	
a. Regulatory arrangements promote competition and the interests of consumers through the availability of a range of qualification options	Historically there has only been one means of entry via one training provider. That provider is wholly owned by the profession representative body. This prevented flexibility on how knowledge and experience could be achieved. The profession is too small to have competition on the assessor, however the CLCA provides for competition on how knowledge and experience is achieved e.g. what training material is purchased and from whom. By dividing the CLCA into five parts which can be achieved in any order at any time, that flexibility is further increased.
b. Regulators should not impose limits on numbers entering the profession either directly or indirectly (for example by restricting places on vocational training courses to those that have successfully obtained a pupillage or training contract)	The CLSB does not impose any limits on numbers entering the profession under the CLCA.
c. Any education and training requirements are sufficiently flexible to meet the needs of a developing market, enabling businesses to make decisions about who they employ	The CLCA is very flexible, in terms of how a candidate chooses to undertake the training, the route taken and the chronology of the parts. That flexibility is also applied to how work-based experience is achieved.

**15. How will the changes affect other approved regulators?**

There is no anticipated detriment to any of the other approved regulators. Under the second consultation process the Solicitors Regulation Authority responded indicating their support for the proposed change of approach by the CLSB.

## **16. Equality impact**

The CLSB does not consider that the proposal contradicts principles set out in the CLSB equality & diversity policy, in fact one of the drivers of the proposal is to remove barriers and so provide for greater equality.

## **17. How the changes will be delivered**

### Project manager

The CLSB has contracted a legal education consultant, who has project managed discussions with potential providers to date and has advised on the drafting of the CLCA handbook. Through her work she has secured the interest of four training companies and a university. Their proposals cannot however be progressed until such time as the CLCA has been approved. It will be part of her remit to continue as the point of contact on progressing their proposals. The invitation to present to the CLSB on this opportunity will set out information and measurable criteria the CLSB will be looking for e.g.

- Demonstrate a clear understanding of legal education delivery by showing a previous track record in successful similar assignments.
- Demonstrate relevant expertise and experience of delivering training and testing of professionals in a MCT form and of assessing drafting and advocacy skills.
- Demonstrate good financial standing.
- Demonstrate their proposals to market the CLCA.
- Organisational structure.
- Qualifications, experience and availability of staff.
- Financial model e.g. staff costs, management & quality assurance, examiner costs, IT, admin etc.
- Proposed pricing structure.
- Proposed charging structure e.g. one-off charge.
- Threshold profit margin.
- Proposals for developing educational support material with timelines.
- Proposed costing of educational support material.
- Proposed format of educational support material e.g. written or electronic.
- Proposals for developing the required assessments with timelines.
- How value for money is represented by their pricing proposals.
- Demonstrate proposed robust quality assurance procedures.
- Demonstrate a track record of sound business management.
- Identify other revenue streams e.g. CPD.
- Demonstrate proposed reporting mechanisms.
- Demonstrate compliance with obligations as a Data Controller under the General Data Protection Regulations (GDPR).
- Demonstrate a positive attitude to working with the CLSB.

### Auditor

Once the CLCA is in place with a provider, the CLSB does not propose to have any involvement in its management or delivery save for an annual independent audit on the quality of the education material, assessment and provider. An education auditor has been working with the CLSB for approximately 5 years.

### **18. Timetable of delivery**

In normal working circumstances, the CLSB aims to work to the following time table in the event the LSB approved the CLCA:

<b>Action</b>	<b>Timescale</b>
Provide potential providers with the approved CLCA	Within 1 week of outcome
Provide potential providers with an invitation to present their costed proposals to the CLSB	Within 4 weeks of outcome
Receive proposals from providers	Within 4 weeks
CLSB consider proposals	Within 6 weeks

### **19. Monitoring desired outcomes**

In the event of implementation of the CLCA, the CLSB proposes to monitor the desired outcomes on standards and effectiveness on an on-going basis via, inter alia:

- (i) its annual independent education audit mechanism; and
- (ii) candidate numbers, and
- (iii) candidate feedback; and
- (iv) feedback from the Costs Lawyer profession at 3 years following implementation of the CLCA.

The CLSB will also monitor, under its supervision arrangements, whether those qualifying via the CLCA pose any greater risk to the consumer than a Costs Lawyer who has qualified via other historical means of entry.

### **20. Standards expected of the provider of the CLCA**

The CLSB proposes a service standards agreement with the provider to cover, for example, commencement & duration, due diligence, services, implementation phases, milestones, service levels, examiners, complaints, appeals by candidates, governance, continuous improvement, security, data protection, business continuity plan/disaster recovery, marketing, branding.

### **21. Current training rules**

Training Rules dated 29 July 2017 remain in place in relation to the few who remain on the current three-year course:

Year 2: 18

Year 3: 22

It is intended that the CLCA would replace the current training rules dated 29 July 2017. Nearer to implementation time, those who have not completed the current three-year course will be offered the opportunity to apply the exemptions offered under the CLCA. In the event all do so, it is proposed the training rules dated 29 July 2017 will be discontinued.

### **22. Publishing data**

The CLSB plans to publish more information under the study section of its website e.g. the number of candidates who sat the assessment and passed. As this will be a new means of entry a new written understanding will be entered into with the successful provider, which will provide for a clear understanding of roles and expectations between the CLSB and provider.

**23. What the CLSB is applying for**

The CLSB has consulted thoroughly. It has listened and adapted its proposal appropriately based on responses received over a period of two years. The LSB website states *“our goal is to reform and modernise the legal services market place by putting the interests of consumers at the heart of the system, reflecting the objectives of the statute that created us, the Legal Services Act 2007.”* The CLSB proposal of a CLCA is in line with that LSB stated goal and accordingly the CLSB seeks LSB approval of the CLCA to enable it to enter into more meaningful dialogue with parties interested in providing the CLCA.

**24. Our contact details**

The CLSB can be contacted in relation to this application by email, post or phone:

Email: [ceo@clsb.info](mailto:ceo@clsb.info)

Post: CLSB, Centurion House, 129 Deansgate, Manchester, M3 3WR

Phone: 0161 956 8969

**END**