

**DRAFT**

**COSTS LAWYER COMPETENCY ASSESSMENT**

**Effective date: XX**

**Definitions**

AAP	Accredited assessment provider, the organisation accredited by the CLSB to undertake the assessment process defined under the CLCA
CLCA	Costs Lawyer competence assessment
CLSB	Costs Lawyer Standards Board
Candidate	A person seeking to qualify as a Costs Lawyer, thus enabling them to apply to the CLSB for a Costs Lawyer practising certificate (authorised to undertake specified reserved legal activities under the Legal Services Act 2007)
Part	One of the five parts forming the CLCA

**Introduction**

From the effective date above, the CLCA replaced the previous means of entry into the Costs Lawyer profession (three year prescriptive education model). The information contained in this document sets out the legal knowledge and competence which must be demonstrated by a Candidate to complete the CLCA, together with details of available exemptions from the assessment and other information.

The CLCA affords Candidates choice and flexibility on how they achieve required legal knowledge and competence to become a Costs Lawyer. Pace of completion will be for a Candidate to decide upon from one year (if the 24 months experience under Part 5 have already been achieved) to five years.

**1. Background**

A Costs Lawyer is a legal costs expert and is concerned with all aspects of legal costs that are controlled by both statute and common law. The three main areas in which a Costs Lawyer may become involved are:

- Solicitor and own client costs.
- Public funded costs (legal aid)
- Costs payable between the parties.

The term “legal costs” is defined in brief under guidance by the Costs Lawyer Standards Board (“CLSB”) as *“the remuneration of legal representatives (e.g. solicitors and barristers) which are controlled by statute or common law.”* Costs Lawyers are employed primarily in legal costs firms and firms of Solicitors.

The CLSB is an approved regulator under the Legal Services Act 2007 under delegated authority of the Association of Costs Lawyers and is responsible for setting and maintaining standards for Costs Lawyers practising in England and Wales. Setting standards starts with point of entry into the profession (qualification). The CLCA set out herein defines that route of entry, assessing knowledge and skills against agreed competence standards.

The CLCA aims to encourage diversity of access enabling aspiring Costs Lawyers to prepare for assessment in a range of ways of their choice, at a pace of their choice.

## **2. Standards (knowledge and competence)**

### **2.1 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.

### **2.2 Statement of knowledge**

The legal knowledge a Costs Lawyer is required to have achieved at point of entry into the profession is set out under Part 1 and Part 2 (Annex 1 and 2). A Candidate is advised to consider whether they have achieved the knowledge listed under these Parts before applying to be assessed by way of multiple choice testing under each Part. Not all that listed in Part 1 and Part 2 will be tested.

### **2.3 Statement of competence**

The competence that a Costs Lawyer is required to have achieved at point of entry into the profession is set out under Part 3 and Part 5 (Annex 3 and 5). A Candidate is advised to consider whether they have achieved the competence listed under Part 3 (Annex 3) before applying to be assessed by way of a practical test. Not all that in Part 3 will be tested.

### **2.4 Reserved legal activity**

Once qualified as a Costs Lawyer (having successfully completed or been exempt from Part 1 to 5 inclusive) the Costs Lawyer can apply to the CLSB for a Costs Lawyer practising certificate (authorised and regulated). An authorised and regulated Costs Lawyer is required to comply with the Costs Lawyer code of conduct which sets out their authorised rights (reserved legal activities). The Costs Lawyer code of conduct can be located on the CLSB website at [www.clsb.info](http://www.clsb.info). Annex 9 sets out the relationship between the CLCA and those reserved legal activities.

## 2.5 Principals of regulation

The Costs Lawyer code of conduct also sets out the seven principles of regulation that a Costs Lawyer authorised and regulated by the CLSB is expected to comply with. Annex 9 sets out the relationship between those principles and the CLCA.

## 2.6 The 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.

## 3. Overview of the CLCA

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

## 4. Access criteria

To commence the CLCA:

- 4.1 A Candidate must be aged 16 or over.
- 4.2 There is no minimum level of prior educational achievement required.

- 4.3 A Candidate need not be in any form of legal employment.
- 4.4 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.

Character and suitability issues considered by the CLSB on an application for a Costs Lawyer practising certificate are:

- (i) Is an un-discharged or discharged bankrupt.
- (ii) Has entered into an individual Voluntary Arrangement under the Insolvency Act 1986 as amended.
- (iii) Has entered into a Partnership Voluntary Arrangement under the Insolvency Act 1986.
- (iv) Has been a director of a company or a member of an LLP which has been wound up or the subject of an administration order, administrative receivership or a voluntary arrangement under the Insolvency Act 1986.
- (v) Has been disqualified from being a company director.
- (vi) Has been committed to prison in civil or criminal proceedings or has been convicted of an indictable offence (subject to the Rehabilitation of Offenders Act).
- (vii) Has been charged with an indictable offence.
- (viii) Lacks capacity within the meaning of the Mental Capacity Act 2005.
- (ix) Has been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1) (d) of the Charities Act 1993.
- (x) Is or has been the subject of a money judgement which has been outstanding for more than 28 days.
- (xi) Has been made the subject of an order under section 43 of the Solicitors Act 1974.
- (xii) Any other matter that might reasonably be expected to be disclosed as affecting fitness to act as a Costs Lawyer.

## **5. The assessment body**

- 5.1 The CLSB will appoint an Accredited Assessment Provider (“AAP”) with proven experience of delivering assessments for legal education and training following a rigorous, open and transparent selection process.
- 5.2 The CLSB will publish the contact details of the AAP on its website at [www.clsb.info](http://www.clsb.info)

- 5.3 The AAP will provide the assessment under Part 1, Part 2 and Part 3.
- 5.4 The AAP will provide the training under Part 4.
- 5.5 Assessment under Part 1, Part 2 and Part 3 can only be undertaken by the AAP appointed at the time of assessment.
- 5.6 The AAP will set out prescribed reading to support successful completion of Part 1, Part 2 and Part 3.
- 5.7 The AAP will offer optional training courses (for purchase) in support of Part 1, Part 2 and Part 3.
- 5.8 The AAP will agree a CLCA Manager and CLCA Appeal Officer with the CLSB for the purposes of administration and reporting to the CLSB.
- 5.9 The CLSB will annually audit provision of the assessment by the AAP to ensure standards are being met and maintained.

## **6. Achieving knowledge and competence**

- 6.1 Under the CLCA, if a Candidate is not eligible for an exemption they have the freedom to choose how they acquire the knowledge set out in Part 1 and Part 2 and competence under Part 3. This can be achieved by, for example:
  - Work experience
  - Self-study (prescribed text books)
  - Training courses

## **7. Part 1: Assessment of legal knowledge: Core legal principles**

- 7.1 Unless exempt, a Candidate is required to pass Part 1.
- 7.2 The assessment will be by way of multiple choice testing.
- 7.3 The AAP will set and mark the assessment.
- 7.4 The pass mark is 50% and over.
- 7.5 The Candidate will be advised of the mark achieved.
- 7.6 In the event of a pass, the AAP will issue a pass certificate.
- 7.7 A Candidate will be required to bring photographic proof of identity on the day of the assessment e.g. passport or driving licence (with photo image).
- 7.8 The Candidate may appeal the outcome and request a recount by the AAP Appeal Officer upon payment of the appeal fee. In the event the mark is upheld on appeal, the appeal fee will be retained by the AAP. In the event the mark was found to be incorrect, the appeal fee will be refunded by the AAP.
- 7.9 There is no limit on the number of attempts to pass Part 1.

## **8. Part 2: Assessment of legal knowledge: Costs law**

- 8.1 Unless exempt, a Candidate is required to pass Part 2.
- 8.2 The assessment will be by way of multiple choice testing.
- 8.3 The AAP will set and mark the assessment.
- 8.4 The pass mark is 50% and over.

- 8.5 The Candidate will be advised of the mark achieved.
- 8.6 In the event of a pass, the AAP will issue a pass certificate.
- 8.7 A Candidate will be required to bring photographic proof of identity on the day of the assessment e.g. passport or driving licence (with photo image).
- 8.8 The Candidate may appeal the outcome and request a recount by the AAP Appeal Officer upon payment of the appeal fee. In the event the mark is upheld on appeal, the appeal fee will be retained by the AAP. In the event the mark was found to be incorrect, the appeal fee will be refunded by the AAP.
- 8.9 There will be no limit on the number of attempts to pass Part 2.

**9. Part 3: Assessment of competence: Drafting pleadings & procedural documents**

- 9.1 Unless exempt, a Candidate is required to pass Part 3.
- 9.2 The assessment will be by way of a practical test.
- 9.3 The AAP will set and mark the assessment.
- 9.4 The pass mark is 50% and over.
- 9.5 The Candidate will be advised of the mark achieved.
- 9.6 In the event of a pass, the AAP will issue a pass certificate.
- 9.7 A Candidate will be required to bring photographic proof of identity on the day of the assessment e.g. passport or driving licence (with photo image).
- 9.8 The Candidate may appeal the outcome and request a recount by the AAP Appeal Officer upon payment of the appeal fee. In the event the mark is upheld on appeal, the appeal fee will be retained by the AAP. In the event the mark was found to be incorrect, the appeal fee will be refunded by the AAP.
- 9.9 There will be no limit on the number of attempts to pass Part 3.

**10. Part 4: Competence: Oral advocacy**

- 10.1 Unless exempt, a Candidate is required to complete Part 4.
- 10.2 The AAP will provide the oral advocacy training day, covering all competencies listed in Part 4 (Annex 4).
- 10.3 A Candidate is required to fully attend and complete the training to enable the AAP to issue a Part 4 completion certificate.
- 10.4 A Candidate will be required to bring photographic proof of identity on the day of the training e.g. passport or driving licence (with photo image).

**11. Part 5: Competence: Qualifying work experience**

- 11.1 Qualifying work experience must:
  - (i) Comprise experience of providing legal services (need not be costs law specific) which provides a Candidate with the opportunity to develop the competences set out under Part 5 (Annex 5); and

- (ii) be of a total employment duration of at least 24 months. This need not be continuous, it can be full or part-time but must have been achieved over a period of 8 years before applying to the AAP for Costs Lawyer status.
- 11.2 The statement in Part 5 (Annex 5) sets out the competence a Candidate is expected to have achieved through that qualifying work experience.
- 11.3 The Part 5 certificate of competence (Annex 8) must be signed by one of the following in the entity in which the Candidate is employed.
  - (i) A Costs Lawyer authorised and regulated by the CLSB at the time of signing.
  - (ii) A Barrister authorised and regulated by the Bar Standards Board at the time of signing.
  - (iii) A Solicitor authorised and regulated by the Solicitors Regulation Authority at the time of signing.
  - (iv) A Chartered Legal Executive authorised and regulated by C.ILEX at the time of signing.
- 11.4 In the event 11.3 cannot be complied with as the Candidate is a sole practitioner, the Part 5 certificate of competence can be signed by one of the authorised and regulated individuals set out under 11.3 (i) to (iv) inclusive who has direct experience of the Candidates work e.g. professional client, barrister.

## **12. Exemptions**

- 12.1 Exemptions for those with a legal qualification are set out under Annex 6.
- 12.2 The AAP may grant other exemptions where there is relevant, sufficient and adequate evidence that the legal knowledge and competencies (and the standard at which they must be acquired) for the Part(s) have been met by the Candidate through other adequate assessment.
- 12.3 The AAP may, with written agreement with the CLSB, amend the exemption schedule should the qualifications listed change following the effective date of this CLCA.
- 12.4 A Candidate is required to make an application for exemption to the AAP in the format of Annex 7, or any other prescribed form issued by the AAP.
- 12.5 The AAP will charge an administrative fee (set by the AAP and agreed by the CLSB) for providing an exemption certificate.
- 12.6 Photocopied documentary evidence in support of the exemption must be attached to the exemption application otherwise it will be returned together with the application fee by the AAP. The Candidate will supply original documentary evidence only upon specific request by the AAP, which the AAP will return by recorded delivery post.
- 12.7 The AAP will undertake whatever checks that a reasonably necessary, and the Candidate will co-operate with those checks, before the AAP issues an exemption certificate.
- 12.8 In the event that a Candidate feels an exemption has been unjustly refused by the AAP, they may, within 21 days of that decision, submit a written appeal to the AAP Appeal Officer with payment of the appeal fee. In the event the decision is upheld on

appeal, the appeal fee will be retained by the AAP. In the event the decision was found to be incorrect, the appeal fee will be refunded by the AAP.

### **13. Appeals**

- 13.1 Any appeal to the AAP by a Candidate must be made in writing and dated, giving a statement of what is being appealed and the reasons why.
- 13.2 The fee for an appeal will be a reasonable fee as set by the AAP and approved by the CLSB.
- 13.3 The appeal process on the outcomes of Part 1 to Part 4 inclusive is set out above, there is no further appeal mechanism.
- 13.4 The appeal process on exemptions is set out above, there is no further appeal mechanism.

### **14. Order of completion**

- 14.1 Parts of the CLCA not exempted may be undertaken in any order.

### **15. Time for completion**

- 15.1 All Parts must be completed within 5 years of the date of:
  - first pass; or
  - first exemption from any Part.

### **16. Assessment completion record**

- 16.1 A CLCA completion record is provided (Annex 10) for a Candidate to use during the course of the assessment process.
- 16.2 Once a Candidate has successfully completed or been exempted from Parts 1-5 inclusive, the completion record should be filed with the AAP together with all required documentary evidence and administrative fee (to be set by the AAP and agreed by the CLSB).
- 16.3 The AAP will consider the completion record, making any checks that it considers appropriate. A Candidate will co-operate with this process.
- 16.4 If the AAP approves the CLCA completion record (and documentation which supports it) it will issue a Costs Lawyer qualification certificate.

### **17. Application to the CLSB for a practising certificate**

- 17.1 Once in receipt of a Costs Lawyer qualification certificate issued by the AAP, the Costs Lawyer can then apply to the CLSB for a Costs Lawyer practising certificate.
- 17.2 Once in receipt of a Costs Lawyer practising certificate issued by the CLSB, the Costs Lawyer will be regulated and authorised, and so entitled to conduct the following reserved legal activities under the Legal Services Act 2007:
  - The exercise of a right of audience
  - The conduct of litigation

- The right to administer oaths

## **18. General**

- 18.1 A Candidate who has commenced the CLCA i.e. they have applied to the AAP for an exemption, or applied to the AAP to be assessed under Part 1, Part 2 or Part 3 or have completed Part 4 or 5, may refer to themselves as being a Trainee Costs Lawyer.
- 18.2 There is no requirement that a Candidate is a member of the Association of Costs Lawyers, the professions representative body whilst undertaking the CLCA or following successful completion and achieving Costs Lawyer status.

## **Annexed**

1. Part 1: Statement of legal knowledge & skill: Core legal principles
2. Part 2: Statement of legal knowledge & skill: Costs law
3. Part 3: Statement of competence: Drafting pleadings & procedural documents
4. Part 4: Training: Oral advocacy
5. Part 5: Statement of competence: Qualifying work based experience
6. Exemptions available from Parts 1-5 inclusive
7. Exemption application form
8. Part 5 certificate of competence
9. Relationship between knowledge/competence and code of conduct
10. CLCA completion record