

REVISED PROPOSED REGULATORY AMENDMENTS

MEMORANDUM OF UNDERSTANDING

Effective Date: **23rd July 2020**

1. Introduction

This memorandum of understanding (MOU) sets out the framework for the Association of Costs Lawyers (previously known as the Association of Law Costs Draftsmen) (ACL) and the Costs Lawyer Standards Board (CLSB) to work together in order to carry out their independent roles and separate functions in accordance with the Legal Services Act 2007. It supplements, but does not replace, any requirements set out in the statutory framework. It is a public document and is intended to provide clarity for all stakeholders in relation to the separate roles of ACL and CLSB.

This MOU is supplemented by an Operational Protocol (OP) which sets out certain administrative duties that each party shall undertake from the effective date. The OP does not set out all activities that will or may be undertaken by the parties. Rather, it focuses on areas where independence of CLSB, assurance for ACL, or clarity of responsibility between the parties is particularly important.

The MOU and OP were agreed as part of ensuring ACL and CLSB's compliance with the Internal Governance Rules implemented by the Legal Services Board on 24 July 2019.

2. Delegation

ACL was granted authorised body status for the purposes of sections 27 and 28 of the Courts and Legal Services Act 1990 by way of statutory instrument titled *The Association of Law Costs Draftsman Order 2006* (SI No 3333 of 2006), which came into effect on 1 January 2007. An authorised body can grant the following rights to carry out reserved legal activities:

- right of audience;
- right to conduct litigation; and
- right to administer oaths.

Under the Legal Services Act 2007 (LSA), ACL was designated an approved regulator of legal services in relation to reserved legal activities carried out by Costs Lawyers. ACL is also the representative body for the Costs Lawyer profession. ACL has an overarching duty to ensure that the exercise of its regulatory functions is not prejudiced by its representative functions. Under the Internal Governance Rules 2019, it must put arrangements in place to maintain the independence of its regulatory functions and separate them from its representative functions. To achieve this, it has delegated the discharge of its regulatory functions to CLSB.

ACL has a residual role in obtaining assurance from CLSB that its regulatory functions are being discharged in accordance with the section 28 of the LSA, or as otherwise required by law.

3. Regulatory independence of CLSB

The Internal Governance Rules 2019 require “each approved regulator [to] have arrangements in place to: separate its regulatory functions from any representative functions it may have; and maintain the independence of its regulatory functions”.

CLSB was established as the regulatory body to carry out the regulatory activities of ACL as an approved regulator.

As required by the Internal Governance Rules 2019 CLSB will carry out regulation independently from any ACL representative interest. It will independently determine the most appropriate and effective way of discharging its functions.

ACL, as the approved regulator having delegated its regulatory functions, will only retain a role to the extent that is reasonably necessary to be assured that these regulatory functions are being discharged in compliance with section 28 of the LSA or as otherwise required by law. ACL continues to exercise its representative function i.e. the representation and promotion of the interests of Costs Lawyers.

4. Discharge of regulatory functions

CLSB will discharge its regulatory functions in accordance with the provisions of the LSA, including section 28.

In particular, CLSB will act in a way that is compatible with the regulatory objectives defined in section 1 of the LSA as:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services provided by authorised persons;
- Encouraging an independent, strong, diverse and effective profession;
- Increasing public understanding of citizens’ legal rights and duties; and
- Promoting and maintaining adherence to the professional principles (as set out in section 1(3) of the LSA).

CLSB will in particular act in accordance with section 28(3) of the LSA by having regard to

- (a) The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which is needed; and
- (b) Any other principle appearing to it to represent the best regulatory practice.

CLSB, by its Chief Executive, Chair or other representative, will communicate directly with the Legal Services Board, Legal Services Consumer Panel, Office for Legal Complaints and other

approved regulators as it sees fit, with particular emphasis on maintaining the effectiveness and independence of its regulatory functions.

5. Assurance and information provision

ACL will act at all times in a manner that ensures the effective regulatory independence of CLSB. ACL will provide regular updates to CLSB on ACL's representative activities to enable CLSB to consider any impact on its assessment of risk to:

- consumers, the profession or the wider public; or
- CLSB's ability to fulfil its regulatory functions on an ongoing basis.

CLSB will independently determine the most appropriate and effective way of discharging its regulatory functions in a manner which is compatible with the regulatory objectives. ACL will not prejudice the independent judgement of CLSB as the regulatory body.

Both ACL and CLSB will work openly and with mutual respect so far as is consistent with their obligations under the LSA and other laws, in furtherance of the consumer and public interest. Each will share information that is of relevance to the other and will respond to requests for information within a reasonable time period.

In particular, CLSB as the regulatory body will provide sufficient information to ACL as the approved regulator as is reasonably required to enable ACL to be assured of CLSB's compliance with section 28 of the LSA. ACL will not use this information for its representative functions unless it receives the information for that purpose or that information is made publicly available.

In fulfilment of this obligation, CLSB will provide information as set out in the OP. If ACL believes on reasonable grounds that it requires additional information in order to be assured of CLSB's compliance with section 28 of the LSA, it will request that information promptly in writing (which may be by email). The CLSB will use best endeavours to provide the information requested.

Where CLSB determines that the requested information should not be provided (for example, because provision would contravene data protection laws, breach confidentiality or undermine CLSB's independence or effectiveness), CLSB will inform ACL promptly in writing. In such circumstances the parties will work collaboratively to agree an appropriate way for ACL to gain the assurance it needs to meet its obligations under the LSA and perform its residual role under the Internal Governance Rules 2019.

6. Governance/management

CLSB will be governed by the CLSB board and employ its own staff free from the influence of ACL. ACL will be governed by the ACL Council and employ its own staff free from the influence of CLSB. Each party shall independently determine its own governance processes, structure, budget, priorities and strategy.

No person will be involved in both decision-making within the CLSB governance structure and the representative functions of ACL.

ACL and CLSB do not, and do not intend, to share operational services. Should the parties identify any areas in which it would be desirable and appropriate to share services in the future, shared services will only be implemented following approval of the ACL Council and CLSB board. In such circumstances, the parties will negotiate any amendments to the MOU and OP as are necessary to ensure continued compliance with the Internal Governance Rules 2019.

7. Finance

CLSB will use all reasonable endeavors to ensure it is financially self-sufficient. ACL as the approved regulator will ensure reasonably required resources are made available to CLSB to carry out the efficient and effective discharge of its regulatory functions.

ACL will raise its income by way of an annual membership fee. CLSB will raise its income by way of the annual Cost Lawyer practicing certificate fee. Either party may raise additional income in other ways, insofar as they are consistent with the MOU and OP and compliant with the LSA.

8. Dispute resolution

The parties will use best endeavours to resolve any disputes between them in relation to this MOU or otherwise by way of ongoing dialogue, negotiation and collaboration. Disputes should be escalated promptly for discussion between the parties' senior staff, such as the Chief Executive or Chair of CLSB and the Chair or Vice Chair of ACL. Either party may ask the Legal Services Board for its view on a matter in dispute.

Any issue relating to compliance with the Internal Governance Rules 2019 which cannot be or has not been remedied within a reasonable period will be reported to the Legal Services Board in writing by ACL. Neither party will take any action in relation to a dispute arising under or in connection with the Internal Governance Rules 2019 until that dispute has been referred to the Legal Services Board.

9. General

This MOU will be reviewed annually to ensure its terms remain accurate and fit for purpose. Either party may request that this MOU be reviewed on an ad hoc basis if a need arises. Any changes will be approved by the ACL Council and CLSB board and signed by an authorised representative.

It is agreed that all introductions, headings and attachments form part of this MOU.