

LEGAL SERVICES

24 JAN 2013

BOARD

Costs Lawyer Standards Board
Centurion House
129 Deansgate
Manchester
M3 3WR

Office: 0161 214 7904
Email: ceo@clsb.info

Wednesday 23 January 2013

Chris Kenny
Legal Services Board
7th Floor, Victoria House
Southampton Row
London
WC1B 4AD

Regulation of the Professional Conduct of Trainee Costs Lawyers by CLSB

Dear Chris,

We write further to the Warning Notice dated 17 December 2012. We apologise for not having responded sooner, we were awaiting the outcome of our January board discussions on the matter. We hereby respond as follows:

Definitions herein:

ACL	Association of Costs Lawyers
ACLT	ACL Training
CLSB	Costs Lawyer Standards Board
LSB	Legal Services Board
MOU	Memorandum of Understanding between ACL & CLSB
OP	Operational Protocol between ACL & CLSB
Proposal	Regulation of the Professional Conduct of Trainee Costs Lawyers by CLSB
Trainee	Trainee Costs Lawyers who are practising in costs law whilst studying for the Costs Lawyer qualification

Point 1

1.1 We fail to see the relevance of the refusal criteria stated to the substantiating text thereunder. What does the OP in place have to do with "competence" or "resource" requirements in paragraphs 3(b) and 4(b) of the Act?

“it seems to us CLSB does not have the requisite powers to regulate Trainee Costs lawyers.”

1.2 The MOU which defined how ACL & CLSB would carry out *“their separate functions in accordance with the Legal Services Act 2007”* is silent on the Proposal consulted upon.

1.3 The OP, a secondary document to the MOU which defined administrative duties was entered into in such terms on 31 October 2011 as CLSB sensibly wanted to ensure it had appropriate processes, procedures and resources in place for the regulation of Costs Lawyers in the first instance.

1.4 The MOU clearly sets out the role of CLSB as one of *“protecting and promoting the interests of consumers”* and encouraging an *“effective profession”*. The Proposal consulted on goes towards achieving these objectives.

1.5 Under the MOU it was agreed *“this MOU will be reviewed annually or when amendment is required to ensure its terms remain accurate and fit for purpose”*. Under the OP it was agreed it would be *“reviewed on a needs be basis to ensure it is fit for purpose”*. The Proposal has been put forward to ensure arrangements in place are indeed *“fit for purpose”* as agreed and signed to by both ACL & CLSB in 2011. ACL has already evidenced its acceptance of the need for change of arrangements where the need is identified as during 2012, CLSB took over the Accreditation of Costs Lawyers from ACL.

1.6 Despite the terms of the OP it is clear from sections on misconduct etc. in the ACLT Handbook and Protocol that this administrative function has actually been delegated by ACL to ACLT.

1.7 ACLT is subject to annual authorisation by CLSB of its Authorised Study Provider status.

1.8 In the view of CLSB it is right that ACL, as purely the representative body, has no jurisdiction on matters of professional conduct of Trainees. Not least because a Trainee needs not even be a member of the ACL.

1.9 Through consultation, the Proposal received support from those in the profession.

1.10 Neither the ACL nor ACLT submitted any objections to the Proposal through the appropriate legal channels (consultation).

1.11 If either ACL or ACLT made any verbal or written submissions to the LSB outside of the appropriate legal channel (consultation) any such submissions must not be considered by the LSB.

1.12 The lack of objection by ACL did not surprise CLSB as ACL has indicated to CLSB its support of entity regulation which would bring the Proposal under the remit of CLSB in any event.

1.13 LSB itself seeks to impose entity regulation across the profession.

1.14 CLSB is required to regulate on an outcomes focused basis. The outcome of the consultation was one of clear support for the Proposal.

1.15 CLSB does not believe ACLT has the required resource, structure, policies and procedures to carry out the Proposal consulted upon.

1.16 CLSB commissioned an independent audit on education during 2012, this was carried out by a person legally qualified with historical experience of education audit with the SRA. The audit, only completed December 2012 and considered by the CLSB board 9 January 2013, identified:

Misconduct

51 *Trainee misconduct is addressed under two policies: one dealing with student discipline and one where a candidate is suspected of cheating (academic misconduct). In relation to the latter, all cases of suspected cheating are referred to the Chairman of the Education Committee. The matter is investigated by the Education Development Officer and heard before a committee of 3 members. The burden of proof is stated to be beyond reasonable doubt and may be held by a majority of the hearing committee. Penalties include taking no action (on the grounds of a lack of intention), requiring a re-assessment or termination of membership. There is no reference to the CLSB Code of Conduct. The policy permits an accused applicant to be represented by friend and the procedure contains the right of appeal against process and penalty. The policy is dated December 2006.*

In relation to the above findings CLSB comments as follows:

- ACLT does not have a Chairman of the Education Committee.
- ACLT does not have an Education Development Officer since their resignation in August 2012.
- ACLT does not have a “committee of three members” to convene three members of what? ACLT is a private limited company with no members, only a shareholder.
- The burden of proof for Trainees is beyond all reasonable doubt yet for Costs Lawyers it is on the balance of probabilities.
- The rules refer to “termination of membership” ACLT has no membership, the ACL does but the ACL and ACLT are separate companies. ACL is the representative body with membership, ACLT is the training company with a shareholder.
- A Trainee need not even be a member of ACL.

1.17 It seems ACLT misconduct procedures are set out in two sections (i) student discipline and (ii) academic misconduct. What jurisdiction does ACLT therefore have in the event of Trainee professional misconduct e.g. Trainee misleads the court? None in the view of CLSB, thus leaving the consumer exposed.

1.18 CLSB does have “competent” and “sufficient resources to perform the role”. During 2012, CLSB convened two Conduct Committee hearings and one Conduct Appeal Committee. It has a panel of both lay and non-lay members who have been interviewed and

selected under defined process. CLSB does, and has indeed proven itself to have both “competence” and “sufficient resource to perform the role”.

Point 2

“ ... not provided sufficient evidence to explain the extent of the regulatory problem that it is trying to address”

2.1 This is a contradiction. The LSB requires entity regulation across all the legal professions by April 2014 which will bring the professional conduct of Trainees in practice under the regulatory remit of CLSB yet the LSB is saying it is not satisfied the CLSB has provided sufficient evidence on the “regulatory problem that it is trying to address”.

2.2. CLSB has set out clearly that at present the professional conduct of Trainees who are practising to achieve their required three years of experience in costs law and practice is not being covered by ACL or ACLT.

“ ... an Approved Regulators must have regard for the Better Regulation Principles”

2.3 The Proposal has been made to support the following three Better Regulation Principles:

- Protecting & promoting the public interest
- Protecting & promoting the interest of consumers
- Encouraging an independent, strong, diverse and effective legal profession

“ ... proposals are not proportionate... ”

2.4 The Proposal is proportionate (2012 Stats: 314 Trainees to 565 regulated Costs Lawyers).

2.5 The professional conduct expected by CLSB of a Trainee practising is the same standard of that of a Costs Lawyer practising. No such provision is currently in place for Trainees as regards their professional conduct. Trainees are, in the view of CLSB, professionals from day one of their “on the job” training and should be treated as such.

“ ... existing problems with ACL and ACL Trainings current regulation not supported by any evidence ”

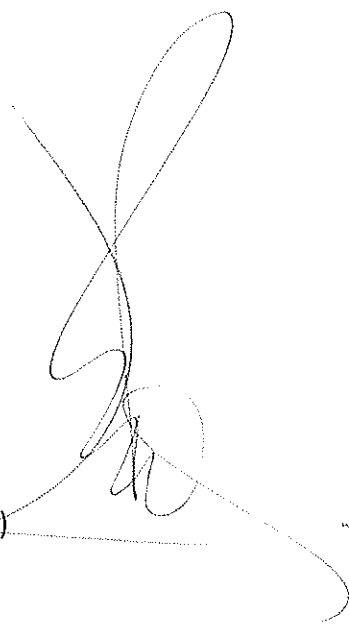
2.6 This submission is now also supported by an independent audit received in December 2012, details of which have been set out above, and clearly demonstrate what CLSB is seeking to address with its Proposal.

In conclusion

CLSB reiterates, Trainees “earn whilst they learn” to achieve the required three years of experience in costs law and practice to become fully qualified. There is currently no mechanism for consumer recourse in the event of professional misconduct by a Trainee. CLSB seeks to set and maintain standards of both a practising Trainee as well as a practising Costs Lawyer, as would be required of them as an entity regulator.

The CLSB should be allowed to regulate its profession in a manner both they and the profession feels appropriate, as is the case here evidenced by the consultation outcome.

Yours sincerely,



Lynn Plumbley
(Chief Executive)