



Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Costs Lawyer Standards Board application for approval of changes to regulatory arrangements relating to the Costs Lawyer qualification.

The Legal Services Board (LSB) has granted an application from the Costs Lawyer Standards Board (CLSB) for approval of the revised Costs Lawyer Qualification.

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 Law Costs Draftsman, known from 1 January 2011 as the Association of Costs Lawyers (“ACL”), is an approved regulator. The ACL has established CLSB to whom it delegates its regulatory responsibilities.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change 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 of each proposed change and of appropriate consultation undertaken. Sub paragraph

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)

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.

Background

5. An independent review has led to CLSB proposing changes to the the Costs Lawyer qualification in order to make it more targeted, proportionate and relevant. ACL deferred trainee entry in 2013 in anticipation of these changes.

Proposed changes

6. Accordingly, CLSB has proposed a revised qualification that includes defined aims and outcomes.
7. The aims of the course for trainees are to:
 - Obtain a general knowledge of each area of law studied, whilst achieving detailed knowledge of the law and procedures relating to the costs area studied
 - Develop skills of legal analysis particularly in relation to costs law and practice
 - Reach the level of competency and performance required of a Costs Lawyer
 - Learn valuable transferable skills.
8. After successfully completing the qualification the desired outcomes are that a trainee should be competent to:
 - Research, explain and apply knowledge of the law and costs law practice accurately and effectively
 - Perform the tasks necessary to practise as a competent Costs lawyer
 - Understand the key ethical requirements contained in the Costs Lawyer Code of Conduct, know where these may impact and be able to apply them in context
 - Demonstrate their knowledge, understanding and skills in the areas of law set out in the compulsory sections of the course
 - Demonstrate their knowledge, understanding and skills in three areas of specialism
 - Reflect on their learning, identify their further and future learning needs and plan for their development as a costs law practitioner.

Assessment of the application

9. During consideration of the application, the LSB raised two specific issues with CLSB:
 - i. Whether, subject to a trainee demonstrating the correct standards, there were circumstances where the three years' relevant work experience might be waived - CLSB responded that the qualification is a three year programme based on "earn

and learn” and therefore it seems appropriate that the required relevant work experience duration remains at three years.

- ii. Whether CLSB is satisfied that the proposed standards are the minimum standard required at the point of entry - CLSB responded that the minimum standard at entry level is an historic issue and that CLSB had no evidence to suggest that a change was required.

10. Throughout its assessment of the application, the LSB has been mindful of the fact that the proposals were developed at the same time that conclusions were being formed in relation to the Legal Education and Training Review (LETR). We have noted that CLSB considers that its proposals are in line with the LETR findings.

11. The LSB is currently consulting on proposed guidance on education and training which the LSB can give under section 162 of the Act. Since this is currently draft guidance it has not formed part of our assessment of this application. However, CLSB recognises that once any LSB Guidance is issued, it may be necessary to review these arrangements again and CLSB has confirmed that it will do so according to any timetable set out in any such Guidance issued by the LSB.

Decision

12. The application has been considered against the criteria in paragraph 25(3) of Schedule 4 to the Act, and the LSB concludes that there is no reason to refuse this application.

13. The Annex to this Decision Notice contains the revised Training Rules and CPD Rules approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from CLSB on 10 October 2013.
- On 4 November 2013, the LSB extended the initial decision period to 7 January 2014.
- This Decision Notice is effective from 9 December 2013.
- The Decision Notice will be published on the LSB’s website on 10 December 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
9 December 2013