



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

Purpose of notice
To set out the LSB's decision to grant the application in full from the CLC for approval of alterations to its regulatory arrangements relating to the setting of standards of education. The arrangements set out what needs to be achieved for individuals to apply successfully for a licence to practise as a licensed conveyancer or as a CLC probate practitioner.
Alterations that are being approved by this decision
Introduction of the <i>CLC Education Framework</i> and <i>CLC Lawyer Standards</i> .

Decision notice

The Council for Licensed Conveyancers' application for approval of changes to regulatory arrangements introducing the CLC Education Framework and CLC Lawyer Standards

The Legal Services Board (“**LSB**”) has granted an application from the Council for Licensed Conveyancers (“**CLC**”) for approval of amendments to its regulatory arrangements introducing the *CLC Education Framework* and *CLC Lawyer Standards*.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

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 CLC is an approved regulator. The notes at page 6 of this notice explain the statutory basis for the decision.

This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB's handling of this application is also set out.

Proposed changes

1. The proposed alterations are to the CLC's regulatory arrangements relating to the setting of standards of education which need to be achieved for individuals to apply successfully for a licence to practise as a licensed conveyancer or as a CLC probate practitioner.
2. The CLC's Education Framework replaces the CLC Student Education Framework and confirms that the CLC determines the standards of education required of individuals to become a CLC Legal Technician and a CLC Lawyer, and how such individuals are assessed. The CLC has appointed the Scottish Qualifications Authority (SQA) to operate the qualifications for individuals training to be eligible to apply to become a CLC Legal Technician and CLC Lawyer.
3. The changes also introduce the 'CLC Lawyer Standards' which set out the expectations on qualification and technical standards for conveyancing and probate, through technical competency statements. These support and mirror both the Education Framework and the 'Overriding Principles' in the CLC Code of Conduct.

Key issues considered in the assessment of the application

4. The LSB raised three substantive issues in its assessment.

Reference to Will Writing

5. The CLC Lawyer Standards made reference to technical standards for will writing. The LSB asked the CLC on what basis it was setting technical standards for an activity that is currently not reserved. The CLC explained that a CLC Lawyer

competent to provide probate services must be able to determine whether a will is or is not valid and to interpret the provisions of a will. There is, however, no specific requirement for the CLC Lawyer to be able to draft a will. For the avoidance of doubt or confusion, the CLC agreed to remove reference to will writing in the CLC Lawyer Standards.

The process for selecting SQA

6. The LSB sought clarification of the process for choosing SQA as the awarding organisation.
7. The CLC confirmed that the CLC operated an “open door” selection process with three conditions:
 - (a) The Organisation must be a Awarding Organisation recognised by Ofqual; or
 - (b) be an training institution with Awarding Powers under HEFCE or Ofqual - up to Level 6; and
 - (c) the organisation must not be or have previously been subject to an investigation resulting from any serious breach of their regulatory arrangements.
8. The CLC further confirmed that Three Awarding Organisations expressed an interest to proceed to an advanced stage of discussions. Each Awarding Organisation then prepared a Positioning Document and presented their preliminary proposal to the CLC. Each was asked to review their internal business commitments to confirm capacity and capability to complete the development and production tasks by autumn 2016. Following this, two withdrew as they did not satisfy all the CLC’s selection conditions. The remaining Awarding Organisation, SQA was subsequently selected.

Compliance with LSB Guidance on regulatory arrangements for education and training

9. The LSB wanted to know whether the CLC, in developing the regulatory arrangements, had taken into account the LSB’s statutory guidance on regulatory arrangements for education and training published in March 2014¹. The LSB’s guidance on regulatory arrangements for education and training includes what someone must be able to do at the “point of authorisation”. Our question was prompted by the reference in the application document (although not in the rules the LSB is being asked to approve) to “CLC Registered Technician”, which was described as an “intermediate qualification”.
10. The CLC confirmed it had taken account of the LSB guidance by ensuring that:
 - Only an individual successfully completing the Level 6 course of training, which is completed after registered technician level is eligible:
 - i. to apply for a CLC licence and be a CLC Lawyer, and therefore
 - ii. be an authorised person, as defined in the Legal Services Act 2007.

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http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

- A “CLC Registered Technician” referred to in the application document, but not in the CLC Education Framework or CLC Lawyer Standards:
 - iii. will not be a CLC Lawyer, and therefore
 - iv. will not be an authorised person.

Decision

11. The LSB has considered the CLC’s application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application; accordingly, the application is granted.
12. Annexes A and B to this decision notice contains the amendments to the regulatory arrangements approved by the LSB, including the removal of the reference: to will-writing from the CLC Lawyer Standards.

Annex A CLC Education Framework

Annex B CLC Lawyer Standards

Chronology

- The LSB confirmed receipt of an application from CLC on 1 September 2016.
- The 28 day initial decision period for considering the application ends on 28 September 2016.
- This decision notice is effective from 28 September 2016.
- The decision notice will be published on our website on 30 September 2016.

Neil Buckley, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

28 September 2016

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. 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.

² Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

CLC Education Framework

[To come into force after it has been approved by the LSB]



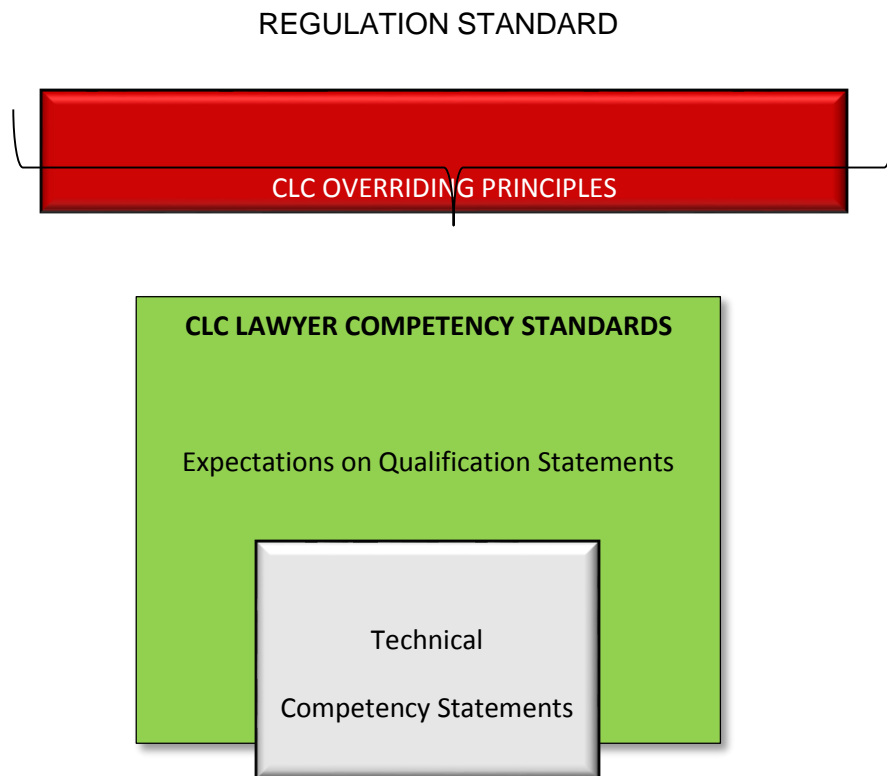
CLC Education Framework

1. The CLC determines the standards of education which individuals must receive to become:
 - a) a CLC Legal Technician; and
 - b) a CLC Lawyer,and agrees how they are assessed.

Annex B

The CLC Lawyer Standards

The Framework



Overriding Principles

The CLCs Overriding Principles set the established benchmark for its regulatory standards in the CLC Code of Conduct.

The new framework uses Expectation on Qualification Statements based on an assessment of ethical, professional and occupational competence. This approach is less prescriptive about the way in which technical knowledge is acquired and instead focuses on the newly qualified conveyancer's ability to demonstrate knowledge through competency to practise.

This will encourage the emergence of more varied and flexible routes to qualify as a CLC lawyer and responds to the demand by legal practices for newly qualified staff that are job and accountability ready.

Expectations on Qualification Statements

Expectations on Qualification Statements are used by the CLC to describe competence at the point of entry into professional practice. Expectations on Qualification Statements encompass under the Standards the level of legal and regulatory knowledge, and ethical and professional conduct, expected of CLC Lawyers.

Under the CLCs Overriding Principles six Expectations on Qualification Statements (A to F) set the benchmark for assessment expected of newly qualified CLC Lawyers.

Technical Competency Statements

Technical Competency Statements support Expectations on Qualification Statements A, B, and C and represent the newly qualifying individual's role and set the benchmark for activity centric competence; for example, Conveyancing ~~or Probate or Will Writing~~.

Technical Competency Statements are indicative of the skills required effectively to perform, deliver and satisfactorily to conclude the service provided to client(s).

In order to meet the Standards, a student will need to demonstrate that their practice or ability to practise is consistent with the Technical Competency Statements relevant to the service being provided.

Overriding Principle 1 Act with independence and integrity

Expectation on Qualification Statement A: Newly qualified CLC Lawyers must have a comprehensive legal and regulatory knowledge:

- of the principles of Law applicable to the service provided: they must be able to apply these principles, to explain them using plain English, and to understand and explain standard legal terms;
- of the management of legal and regulatory issues applicable to the individual client(s) and the CLC regulated practice: they must be able to discharge satisfactorily all professional obligations so as to not compromise clients(s) interests;
- to distinguish between different types of regulatory risk associated with client(s) and with the CLC Practice.

Technical Competency Statements for Conveyancing

1. Able to identify the nature of legal service provision required for client(s) on a full range of conveyancing matters inclusive of: professional accountability and consumer rights and protection afforded.
2. Able to conduct and manage legal matters arising in a typical residential conveyancing transaction, including leasehold.
3. Able to identify when a matter becomes complex, for example where the meaning of a document setting out legal rights to a property is disputed, and requires in depth knowledge and/or greater experience in order satisfactorily to conclude the matter.

Technical Competency Statements for Probate

- a. Able to identify the nature of the legal service provision required to administer an estate to include the formal requirements for the validity, revocation and alterations of wills and codicils and intestacy provisions.
- b. Able to recognise and apply the provisions of claims against the estate which may include the Inheritance (Provision for Family and Dependents) Act 1975 or constructive/resulting trust.
- c. Able to identify when a matter becomes complex, for example in relation to taxation of estates, Agricultural Property Relief /Business Property Relief, lifetime gifts, foreign assets, cross border and domicile issues.

Overriding Principle 2 Maintain proper standards of work

Expectation on Qualification Statement B: Newly qualified CLC Lawyers must have a comprehensive knowledge of processes relating to the legal service provided and be able to apply legal research and analytical skills to:

- manage legal files, case management and accounting systems in order to provide a timely service; keeping the client(s) appropriately informed at all times;
- draft and review legal documents related to the service provided;
- manage case management systems and associated risks to identify solutions using all reasonable methods so that lawful and satisfactory conclusions are reached in the interests of client(s);
- secure when appropriate advice from across the wider legal and financial services environment to ensure lawful and equitable outcomes in the best interest of client(s).

Technical Competency Statements for Conveyancing

4. Able to identify and implement appropriate means to rectify defects in the title to establish good marketable title for conveyancing matters, including essential research, and communication with peers and third parties to provide clear advice to client(s).
5. Understand how to draft the contract(s) for transactions on all titles.
6. Has a detailed knowledge of the principles of exchange of contracts and completion, and where any variation of the standard arrangements for the transfer of property is appropriate.
7. Has a detailed knowledge of pre-Completion, Completion and post Completion requirements.

Technical Competency Statements for Probate

- d. Understands how drafting of a will affects the administration of an estate in relation and is able to provide explanation of the different types of gifts and in particular where abatement or ademption is applicable.
- e. Able to provide clients(s) with explanation of the law and practice governing the intestacy provisions, to include partial intestacy.
- f. Understands the importance of time limits in relation to estate administration to include section 27 Trustee Act 1925 Notices, interest payable on Inheritance Tax, Deeds of Variation and limitation periods.
- g. Able to identify and implement appropriate means to recognise what type of grant of representation is appropriate including where there is or is not a valid will and the valid appointment of an executor or administrator and prepare the requisite Oath to effect this.
- h. Has a detailed knowledge of the law and practice governing the payment of estate debts, taxes and administration expenses; and what is required for the proper completion of Inland Revenue accounts required by H.M.Revenue and Customs.

Overriding Principle 3 Act in the best interests of each Clients

Expectation on Qualification Statement C: Newly qualified CLC Lawyers must have a comprehensive regulatory knowledge and an understanding of their personal responsibility to:

- identify when the level of risk exceeds the scope of professional service provided;
- verify full and adequate courses of action by taking advice and guidance from other professionals;
- provide robust client protection and confidentiality arrangements and maintain robust regulatory, accounting and financial procedures;
- establish processes to ensure any client complaints or issues are dealt with impartially and comprehensively in a timely manner;
- ensure compliance with the CLCs regulatory regime and any third party requirements, in order to deliver satisfactory outcomes on behalf of client(s) and the CLC regulated practice;
- identify risk and formulate appropriate steps to mitigate risk.

Technical Competency Statements for Conveyancing

8. Able to identify risk and determine steps to be taken to mitigate risk and in particular:

- i. able to determine what actions are necessary to manage the financial implications of a completion including the lender'(s) requirements to manage the lenders security appropriate to the client(s) and property;
- ii. able accurately to reconcile client financial outcomes pertinent to the transaction and remedy any arising issues;
- iii. able to recognise and manage professional liabilities in relation to client(s) and the practice in order to discharge satisfactorily all necessary and appropriate obligations;
- iv. able to provide appropriate legal advice relevant to the transaction to enable client(s) to make informed decisions.

Technical Competency Statements for Probate

i. Able to identify risk and determine steps to be taken to mitigate risk and in particular:

- i. able to determine what actions are necessary to manage the financial implications of administering an estate to conduct matters associated with the powers and duties of personal representation to administer estates;
- ii. able to manage the process of getting in estate assets and making claims on behalf of the estate; including recognising the nature of any charge, what is chargeable, appropriate exemptions, reliefs and anti—avoidance provisions;
- iii. able to recognise and manage professional liabilities in relation to the estate administration and any fiduciary duties in order to discharge satisfactorily all necessary and appropriate obligations;
- iv. able to provide appropriate legal advice relevant to the provision to enable client(s) and their beneficiaries to make informed decisions.

Overriding Principle 4 Comply with your duty to the court

Expectation on Qualification Statement D: Newly qualified CLC Lawyers must understand their professional accountability to the Court.

Overriding Principle 5 Deal with regulators and ombudsmen in an timely and co-operative way

Expectation on Qualification Statement E: Newly qualified CLC Lawyers will be accountable for:

- managing internal and external professional relationships, dealing with other lawyers and professional third parties;
- resolving issues impartially and comprehensively; including recognising where the service provided is not of the expected standard and identifying the course of action to provide appropriate redress for the client where necessary;
- managing compliance with the CLC's Regulatory Arrangements;
- up-holding regulatory and client ethics by ensuring all activities are conducted as required and expected by the CLC.

Overriding Principle 6 Promote equality of access and service

Expectation on Qualification Statement F: Newly qualified CLC Lawyers must be able to:

- ensure the service delivered is accessible and responsive to the needs of individual clients, including those who are vulnerable; taking responsibility to identify and articulate risk associated to client(s) and the practice;
- apply the appropriate level and style of communication to suit a variety of audiences across the broad spectrum of clients and professional parties in order to manage expectations;
- deal with any complaints impartially, comprehensively, and in a timely manner.