



## 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.

<b>Purpose of notice</b>
To grant an application from the Costs Lawyer Standards Board (CLSB) approving alterations to its regulatory arrangements in respect of its Training and Continuous Professional Development (CPD) Rules
<b>Alterations that are being approved by this decision</b>
<p>The replacement of an existing single set of regulations covering training and CPD with two separate sets of rules:</p> <ul style="list-style-type: none"><li>• The Trainee Costs Lawyer Training Rules; and</li><li>• Costs Lawyer Continuous Professional Development (CPD) Rules</li></ul> <p>The separation of the training and CPD rules also incorporates a number of changes of substance to the CLSB's regulatory arrangements which are set out in this notice.</p>

## Decision notice

### Issued by the Legal Services Board (LSB) under Part 3 of Schedule 4 to the Legal Services Act 2007

#### Costs Lawyer Standards Board (CLSB) rule change application for approval of alterations to its Training and Continuing Professional Development (CPD) Rules

The LSB has granted an application from the CLSB approving alterations to the regulatory arrangements in respect of its Training and Continuing Professional Development (CPD) Rules

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 Costs Lawyers (**ACL**) is an approved regulator and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

#### Proposed changes

1. The alterations replace an existing single set of regulations covering training and CPD with two separate sets of rules:
  - The Trainee Costs Lawyer Training Rules; and
  - Costs Lawyer Continuous Professional Development (CPD) Rules
2. The separation of the training and CPD rules also incorporate changes of substance. Of these, the principle alterations are summarised below.

#### *The Trainee Costs Lawyer Training Rules*

- Increase in the minimum age of access to the Costs Lawyer Qualification (CLQ) from 16 to 18.
- Clarification of the pass rate in order to make this consistent with outcomes introduced in 2013.
- Removal of a rule that the CLQ course cannot be completed in less than three years.
- Removal of the requirement that a Trainee Costs Lawyer (**TCL**) is a member of the representative Association of Costs Lawyers (**ACL**). As the ACL is a voluntary membership body, the CLSB consider it is unfair to require membership if a TCL decides that they do not wish to belong to that body.
- Removal of references to ACL, which CLSB says it inherited when it became the approved regulator, and replace with "Accredited Study Provider" (**ASP**).

- Introduction of a written appeal process if an application to become TCL is refused by an ASP.
- Clarification of the rules on course exemptions.
- Update of the rules to reflect that the yearly 'modules' have been referred to as yearly 'units' since 2013.
- Introduction of a reduction of 15% per exempted module on the overall unit fee charged by an ASP for costs lawyer training.

#### *Costs Lawyer Continuous Professional Development (CPD) Rules*

- Accountability for assurance of CPD compliance falls to the CLSB
- Clarity on the points cap on activities
- Minor clarification on references to using e-learning tools
- Given the number of sole practitioners and those running a costs law business, CPD points introduced for "receiving or delivering training in relation to practice management".

#### **Key issues considered in the assessment of the application**

3. The LSB sought clarification and further information on five issues.

#### *LSB Education and Training Guidance*

4. The LSB asked what account the CLSB had taken of the LSB's *Guidance on regulatory arrangements for education and training*<sup>1</sup> in developing the changes. The CLSB highlighted that in respect of Outcome 1 of the LSB guidance, *What the individual must know*, examples of modernisation includes CPD being extended to include practice management skills, which the CLSB considers essential for the sound provision of service by a profession made up of so many sole practitioners and small businesses. It also brings the rules in line with the qualification, revised three years ago, to include a business management section.
5. With regards to Outcome 2 of the LSB guidance, *Providers of education have to have flexibility*, the CLSB said it had always provided ACL Training (its only authorised provider) with flexibility on the delivery of the qualification, and that its only involvement is an annual audit of their provision of the qualification, the outcome of which then forms the basis of their continued accreditation for the following year. Many of the rule changes made have been as a result of representations made over the last three years by ACL Training where they have found the rules need reconsideration. The CLSB said it had listened to those representations and acted accordingly. It added that it believes the changes will enable ACL Training to better achieve the outcomes of the three year qualification. Once the rule change has been implemented, the CLSB said it will be investigating other possible means of entry, for example, apprenticeship; time served; and a competency test.

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[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Guidance\\_2.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20140304_LSB_Education_And_Training_Guidance_2.pdf)

### *Reduction of Pass Rate*

6. The existing training rules (Rule 7.2) set out the pass rate at 65%. However, under aims and outcomes of the Costs Lawyer qualification approved by the LSB in 2013, the pass rate was set at 50%. The LSB noted that the revised rules did not include a specific reference to the pass rate of 50%. The CLSB explained that this was because it had intended that the pass rate in the aims and outcomes of the qualification would prevail if the Training Rules were silent on this point. Nonetheless, for the avoidance of doubt the CLSB agreed during our assessment that it would specify the 50% pass rate in The Trainee Costs Lawyer Training Rules. It has amended the regulations accordingly.

### *Raising the minimum age of access*

7. Under the current rules the CLQ is open to applicants over the age of 16. The CLSB proposes to raise the minimum age to 18. The CLSB consultation explained that the reasons for this are that in the past five years the ASP has not received any applications from under 18s. In addition, the CLSB says there are extra vetting and duty of care obligations on the provider under employment law for the 16-18 age group. The LSB was concerned that raising the minimum age could be perceived as a barrier to entry, and queried why, in the context of the general move toward apprenticeships in the legal sector, the CLSB had decided to raise the age. The CLSB said that it is its intention to consider apprenticeships in the coming months and may explore apprenticeships further as an entry option. These will be subject to a separate review and set of rules, under which the age of entry will be considered further.

### *Appeal process*

8. The LSB sought clarification on the grounds for an appeal against refusal by an ASP. We noted that proposed rule 11.2 of the new Training Rules states that the applicant must set out in full the reasoning for the appeal and attach required evidence. We asked if there would be guidance to support section 11 and assist appellants. The CLSB explained that it had not stated specific grounds in the rules as it felt it appropriate to give anyone who has had an application refused, the right to ask the opinion of the CLSB as a third party. The training company that provides the qualification is a business over which the CLSB has no day-to-day control (the CLSB authorises the training company subject to an annual audit). The CLSB considers that the change will ensure greater fairness by providing an avenue through which an appeal to the CLSB can be made.

### *Approach to CPD*

9. The LSB noted that the CLSB's approach to CPD was not in alignment with the LSB's 2014 Education and Training guidance and the trend of some other regulators to move away from an arbitrary hours based points system. The LSB's guidance is that the focus of regulations should be to allow individuals and firms to plan, implement, evaluate and reflect annually on training needs. The CLSB said it does

not necessarily agree with the less prescriptive approach to CPD that has been adopted by some other regulators. While the CLSB's policy approach to CPD is not wholly in keeping with the LSB's education and training guidance, we do not consider this a reason in itself to refuse the application. We do, however, welcome the CLSB's intention to monitor the impact of the training and CPD rules in three years when it says the impact of changes (such as automated bills of costs) has been evaluated. While the precise timing of a review is up to the CLSB we would encourage it to review the impact earlier if it has the data to do so.

## **Decision**

10. The LSB has considered the CLSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act) and has decided to grant the application.
11. The Annexes to this decision notice contains the new CLSB Trainee Costs Lawyer Training Rules and the Costs Lawyer Continuing Professional Development (CPD) Rules approved by the LSB.

## **Chronology**

- The LSB confirmed receipt of an application from the CLSB on 19 May 2017.
- The LSB issued an extension notice on 15 June 2017 which extended the initial decision period to 30 June 2017.
- This decision notice is effective from 29 June 2017
- The decision notice will be published on our website by 3 July 2017

**Neil Buckley, Chief Executive of the Legal Services Board**  
**29 June 2017**

*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 rules<sup>2</sup> 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.

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<sup>2</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## ANNEX A

### TRAINEE COSTS LAWYER

#### TRAINING RULES

Regulator: Costs Lawyer Standards Board

Effective date: XX

These rules replace all other Training Rules previously issued by the Costs Lawyer Standards Board (CLSB). They aim to ensure those who seek to achieve Costs Lawyer status through the Costs Lawyer qualification (Trainee Costs Lawyer) achieve detailed knowledge of costs law and practice, develop skills of legal analysis, reach a high level of competency and learn valuable transferable skills.

#### **1. Accredited study provider**

- 1.1 Study for the Costs Lawyer qualification may only be undertaken with a provider accredited by the CLSB. The register of Accredited Study Providers (ASP) can be located on the CLSB website at [www.clsb.info](http://www.clsb.info)

#### **2. Age requirement**

- 2.1 The minimum age of an applicant to become a Trainee Costs Lawyer (Applicant) is 18 at the date study will commence with an ASP.
- 2.2 If requested by an ASP, the Applicant will provide proof of their date of birth before their application is considered.

#### **3. Entry level qualifications**

- 3.1 The minimum level of qualification for an Applicant is (or equivalent):
- (i) four GCSE at grade C or above, English and maths being compulsory; or
  - (ii) two A level passes and 1 GSCE at grade C level to include English; or
  - (iii) three AS level passes to include either English or maths; or
  - (iv) GNVQ at intermediate or advanced level, provided a communications skills element is included; or
  - (v) passing a written aptitude test set by an ASP, and approved by the CLSB.

#### **4. Application to an ASP**

- 4.1 It is not a requirement that an Applicant is a member of the Association of Costs Lawyers at the time of application to an ASP or during their period of study with an ASP as a Trainee Costs Lawyer.
- 4.2 An application must be submitted fully completed (signed, with all required information and documentation) by the date stipulated by the ASP.
- 4.3 Documentary evidence of entry level qualifications must be submitted with an application. Photocopies will be acceptable unless the ASP specifically requests a certified copy.
- 4.4 An Applicant must provide the name, address and phone number of two referees, one personal and one professional. Each referee must know the Applicant well enough to vouch for their character and know of any problems the Applicant may have had e.g. convictions, disciplinary issues, plagiarism.
- Personal referee: Should be a person who has known the Applicant for at least three years.
  - Professional referee: Should be a professional person who has worked with the Applicant, preferably as the Applicants manager/supervisor.
- 4.5 The ASP will advise the Applicant in writing whether an application has been approved. In the event an application is refused, the ASP will state the reasons why.

## **5. Disclosure requirements**

- 5.1 On an application to an ASP, the Applicant must declare any information that might affect their suitability to be a Trainee Costs Lawyer/Costs Lawyer, such information will include:
- Any disciplinary action by any professional body.
  - Any finding of cheating in exams or plagiarism during the course of study.
  - If they are an un-discharged or discharged bankrupt.
  - If they have entered into an Individual Voluntary Arrangement or Partnership Voluntary Arrangement under the Insolvency Act 1986, as amended.
  - If they have been a director of a company or 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.
  - If they have been disqualified from being a company director.
  - If they have been committed to prison on civil or criminal proceedings or have been convicted of an indictable offence (subject to the Rehabilitation of Offenders Act 2014).
  - If they lack capacity within the meaning of the Mental Capacity Act 2005.
  - If they have 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.
  - If they are or have been the subject of a money judgement outstanding for more than 28 days.



- If they have been the subject of an order under S.43 of the Solicitors Act 1974.
- Any other matter that might reasonably be expected to be disclosed in affecting their fitness to study for the Costs Lawyer qualification or become a Costs Lawyer.

5.2 In the event of any declaration(s) under rule 5.1 the ASP will consider the suitability of the Applicant and the ASP may refuse the application.

5.3 On receipt of an application, the ASP may make any required checks, including criminal records checks, to ensure the suitability of an Applicant. A failure to disclose, or the provision of misleading information on an application will be taken into account by the ASP when considering the suitability of an Applicant to become a Trainee Costs Lawyer.

## **6. Qualifying experience**

6.1 There is no requirement that an Applicant or Trainee Costs Lawyer is employed in costs law and practice at the time of their application to an ASP or during the course of their study with an ASP.

6.2 To successfully complete the Costs Lawyer qualification a Trainee Costs Lawyer will be required to evidence to the ASP that they have also achieved three years' work experience in costs law and practice (Qualifying Experience). The three years' Qualifying Experience need not be continuous.

6.3 On successfully completing the Costs Lawyer qualification the ASP will audit Qualifying Experience to ensure it was achieved and was relevant i.e. in costs law and practice. The ASP will not issue a completion certificate of the Costs Lawyer qualification until:

- (i) all the Costs Lawyer qualification has been successfully completed; and
- (ii) the ASP is satisfied Qualifying Experience required under rule 6.2 has been achieved.

## **7. Learning support**

7.1 If an Applicant or Trainee Costs Lawyer has or develops any needs that may affect their learning then they are required to notify the ASP on application or when the need arises.

## **8. The Costs Lawyer course**

8.1 The Costs Lawyer course is as set out by the CLSB, located on the CLSB website at [www.clsb.info](http://www.clsb.info), the pass rate for each yearly unit is 50%.

8.2 Once the Costs Lawyer qualification has been completed, there will be no further training obligations by a Trainee Costs Lawyer to an ASP.

## **9. Exemptions**

9.1 A table of CLSB approved exemptions to modules/units for qualifications including a law degree, bar professional training course, legal practice course and CILEX can be located on the CLSB website at [www.clsb.info](http://www.clsb.info).

9.2 Exemptions will be applied by an ASP where an Applicant has evidenced they have successfully undertaken study for the exempted module/unit. An Applicant will assist an ASP in validation of a qualification otherwise no exemptions will be applied.

9.3 Where exemptions are applied, an ASP will apply a reduction of 15% per exempted module on the overall unit fee. Where all 6 modules in a unit are exempted, no fee will be payable to the ASP for that unit.

## **10. Continuing professional development (CPD)**

10.1 A Trainee Costs Lawyer is not required to undertake any CPD during their period of study for the Costs Lawyer qualification.

10.2 On successfully completing the Costs Lawyer qualification a Costs Lawyer may then apply to the CLSB for a Costs Lawyer practising certificate. Only then is CPD to be achieved with accountability to the CLSB. A Costs Lawyer practising certificate authorises a Costs Lawyer to undertake the following reserved legal activities under the Legal Services Act 2007:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths.

## **11. Appeal process**

11.1 In the event an application is refused by an ASP under rules 4, 5 and 6, the Applicant may, within 14 days, make a written appeal to the CLSB.

11.2 The Applicant must set out in full the reasoning for the appeal and attach all required evidence e.g. application, ASP decision and other relevant supporting documentation.

11.3 The CLSB will use all reasonable endeavours to consider the appeal within 14 days.

11.4 The CLSB will advise the Applicant in writing as to the appeal outcome, setting out its reasoning in full.

11.5 The CLSB will send a copy of the appeal outcome to the ASP.

11.6 In the event the CLSB upholds the Applicants appeal, the ASP will comply with the appeal outcome of the CLSB.

**END**

**ANNEX B**

**COSTS LAWYER**

**CONTINUOUS PROFESSIONAL DEVELOPMENT (CPD) RULES**

**Regulator: Costs Lawyer Standards Board**

**Effective date: XX**

These rules relate to the continuous professional development (CPD) of a Costs Lawyer authorised and regulated by the Costs Lawyer Standards Board (CLSB) and replace all other CPD rules previously issued by the CLSB. A Costs Lawyer is required to continuously develop their knowledge and practical skills to ensure they operate to the standard expected of them in the Costs Lawyer Code of Conduct.

**Identifying CPD needs**

Costs Lawyers are encouraged to plan their annual CPD activities based on an objective assessment of their personal training and development needs in relation to their work and business practice. A Costs Lawyer should determine for themselves (bearing in mind their existing skills and the nature of their practice) the most appropriate subjects where they should undertake CPD, taking account of their responsibilities. When considering whether a type of training or activity would be appropriate it is suggested a Costs Lawyer asks the question “*what is the value of this training in providing legal services to my clients?*”

**1. Achieving CPD**

- 1.1 The CPD year is a calendar year (1 January to 31 December).
- 1.2 A minimum of 12 CPD points must be achieved in a CPD year from the activity table under rule 4 save in the event of application of rule 1.4.
- 1.3 Each CPD activity should be at an appropriate level and contribute to the general professional skills and knowledge of the Costs Lawyer.
- 1.4 In the following event(s) a Costs Lawyer will be required to achieve 1 CPD point for each full month worked during that CPD year. A Costs Lawyer:
  - (a) Qualifies part way through that CPD year.
  - (b) Is reinstated part way through that CPD year.
  - (c) Takes long term leave during that CPD year e.g. maternity, sick leave, career break.
- 1.5 In accordance with Costs Lawyer Practising Rules, the CLSB may refuse to renew a practising certificate or may issue the practising certificate subject to conditions where a Costs Lawyer has failed to comply with CPD requirements.

- 1.6 A Costs Lawyer is required to co-operate fully with the CLSB in the annual CPD audit process undertaken by the CLSB.

## 2. CPD providers

2.1 A Costs Lawyer can apply to the CLSB under prevailing Accredited Costs Lawyer Rules to be accredited for the purposes of providing CPD.

2.2 The CLSB will recognise CPD provided by any of the following:

- CLSB Accredited Costs Lawyer (register on CLSB website [www.clsb.info](http://www.clsb.info))
- CLSB Accredited Study Provider (register on CLSB website [www.clsb.info](http://www.clsb.info))
- Solicitor
- Barrister
- CILEX
- A representative body of a legal profession e.g. The Association of Costs Lawyers, The Law Society, Bar Council, CILEX
- An approved regulator of a legal profession e.g. Solicitors Regulation Authority, Bar Standards Board, CILEX Regulation Training company (legal or business skills)

## 3. Maintaining records

A Costs Lawyer is required to:

- 3.1 Keep a written record of CPD undertaken during a CPD year. A CPD record sheet can be accessed on the CLSB website at [www.clsb.info](http://www.clsb.info)
- 3.2 Submit their signed CPD record to the CLSB upon request.
- 3.3 Keep evidence of CPD achieved for 2 years from the end of the CPD year.

## 4. CPD table

4.1 Certain activities carry a point cap, being the maximum that can be claimed for that activity in a CPD year.

Activity		CPD points achievable	Point cap
1	Attending a costs law conference or other law conference	6 points for one day; or 4 points for half day; or 1 point per hour attended (excluding breaks)	10 points
2	Attending training (in-house or external) on:	1 point per hour attended	6 points

	<ul style="list-style-type: none"> <li>costs law and practice; or</li> <li>a legal subject matter of relevance to practice</li> </ul>	<i>(excluding breaks)</i>	
3	<p>Undertaking training via internet (e-learning) e.g. webinar, podcast on:</p> <ul style="list-style-type: none"> <li>costs law and practice; or</li> <li>a legal subject matter of relevance to practice</li> </ul>	As attributable by provider	6 points
4	An Accredited Costs Lawyer preparing and delivering training on costs law & practice	1 point for preparation 1 point per hour of delivery	4 points
5	ACL membership	2 points	2 points
6	Published written work on costs law e.g. article or law report (minimum 400 words per article)	3 points per published article	6 points
7	Acting as an examination marker for an Accredited Study Provider	4 points	4 points
8	Delivering a seminar on legal costs to a client	1 point per hour of delivery	2 points
9	Supervising a Trainee Costs Lawyer undertaking the Costs Lawyer qualification	1 point per hour	4 points
10	Receiving or delivering training in relation to practice management e.g. business, leadership, personnel management, accounts management	1 point per hour of delivery; or 1 point per hour attended	3 points

END