

Application for approval by the Legal Services Board

Applicant: Costs Lawyer Standards Board (the "CLSB")

An application for the approval of four new regulatory governance documents (the "Documents") within the Costs Lawyer profession to be introduced by CLSB when it becomes an approved regulator under delegated authority of the Association of Costs Lawyers (the "ACL")

Application authority

The application, as set out above, is filed under Schedule 4, Part 3 of the Legal Services Act 2007 (the "LSA"). The application should be read in conjunction with the following documentation attached hereto:

1. Consultation Paper (9 May 2011)
2. Draft Code of Conduct
3. Draft Practising Rules
4. Draft Disciplinary Rules & Procedures
5. Draft Training & CPD Rules
6. Consultation Response Report (*not for publication*)

Also, attach for information are the following documents:

1. Consultation list (email addresses removed)
2. Current ACL bye-laws
3. Current ACL Code of Conduct
4. Current ACL Compliant & Disciplinary Rules
5. Current ACL Compliance with CPD Requirements
6. Current ACL Publicity Code

Introduction

The Association of Law Costs Draftsmen, known with effect from 1 January 2011 as the Association of Costs Lawyers is an Approved Regulator under the LSA. The ACL is in the process of separating its representative function from its regulatory function to ensure statutory compliance and independence. The CLSB has been established to undertake that regulatory function under delegated authority from the ACL, expected 31 October 2011 latest. With effect from 1 January 2012 there will be only two levels of ACL membership:

- Trainee Costs Lawyer
- Costs Lawyer

Costs Lawyers are currently regulated by ACL and CLSB are looking to undertake that regulatory role. As at 4 August 2011 there were 521 Costs Lawyers.

Proposed four new regulatory governance documents

CLSB proposes the following Documents to replace those currently in effect with the ACL.

- Code of Conduct
- Practising Regulations
- Disciplinary Rules
- Training & CPD Rules

It is intended these will be introduced into practice with immediate effect on the ACL delegating its authority as an Approved Regulator to CLSB. Drafting has taken the characteristics of the Costs Lawyers' profession into account with complex sets of prescriptive rules deliberately avoided.

CLSB propose the Documents as it is considered current rules, codes and regulations of the ACL:

- Do not fully reflect the approach of the LSA toward regulatory objectives or professional principles.
- Are anachronistic.
- Required modernisation and consolidation.

Further, CLSB propose them to ensure:

- Costs Lawyers have a set of principles and rules which conform to the professional principles set out in section 1(3) of the LSA.
- Regulatory governance documentation is clear and readily understood by Costs Lawyers and those who use their services.

The Costs Lawyer profession

Costs Lawyers are regulated members of the profession who hold a valid practicing certificate. Trainee Costs Lawyers and Law Costs Draftsmen are not regulated. Costs Lawyers practice in a wide variety of different formats. A large number of Costs Lawyers practice from home as sole practitioners whilst others spend their working lives as in-house Costs Lawyers either for large firms of Solicitors or institutions. Others practice in multi-office firms which have Costs Lawyers working for them in a traditional office context.

The professional conduct of Costs Lawyers does not give rise to many service complaints or conduct breaches. A Complaint about the service provided by a Costs Lawyer falls within the jurisdiction of the Legal Ombudsman. A complaint about the conduct of a Costs Lawyer falls within the jurisdiction of the Approved Regulator (currently ACL, soon to be CLSB). In

the event of a hybrid complaint, it has been agreed that the Legal Ombudsman will deal with the service element first, unless the conduct element is considered serious in nature. Complaints against a Trainee Costs Lawyer and Law Costs Draftsmen fall outside the scope of the ACL/CLSB/Legal Ombudsman.

Separation of representation and regulation

The relationship between the ACL and the CLSB will be governed by a Memorandum of Understanding to ensure that in cases of difference between the bodies recourse may be had to the Legal Services Board (LSB) for the resolution of such differences at any time, subject to a mediation provision.

Impact on regulatory objectives

Section 176(1) of the LSA obliges a regulated person to comply with the regulatory arrangements of the Approved Regulator. The Documents will assist CLSB in promoting regulatory objectives as required under S28 of the LSA, and Costs Lawyers in understanding and complying with professional expectations, as they are clear and will be made easily accessible. All these Documents have been drafted with the public/client interest in mind.

“protecting and promoting the public interest”

The proposed Documents are clear and will assist Costs Lawyers in understanding and meeting professional expectations of them. This in turn protects public interest. Further, they define a robust disciplinary system for the protection of the public.

“supporting the constitutional principle of the rule of law”

The Documents require members to uphold the rule of law.

“improving access to justice”

Costs Lawyers rarely contract direct with the public, however their services support access to justice in relation to costs.

“protecting and promoting the interests of consumers”

The Documents state Costs Lawyers are expected to act in the best interest of their client.

“promoting competition in the provision of services within subsection (2)”

The Documents ensure that services offered are of a comparable standard therefore providing fair competition.

“encouraging an independent, strong, diverse and effective legal profession”

Under the Documents, Costs Lawyers are expected to ensure their independence is not compromised. The Documents have been drafted with the intention of improving the implementation and defence of high professional standards.

“Increasing public understanding of the citizen's legal rights and duties”

The Documents make it clear the standards expected of Costs Lawyers which in turn provides reassurance in relation to the quality of service they may expect.

Compliance with Better Regulation Principles

In developing the Documents CLSB has taken into account the Better Principle of Regulation.

Transparency: CLSB has engaged in wide ranging consultation on the Documents and has written a Consultation Response Report for the LSB to fully understand actions taken as a result of consultation responses received. Once the documents become effective following delegation of regulation, they will be accessible on both the CLSB and ACL website.

Accountability: CLSB believes the Documents encapsulate principles based and an outcome focused approach to regulation and that they offer clarity and transparency to Costs Lawyers, the consumer, the LSB and regulated community.

Proportionality & consistency: CLSB believes the Documents will provide confidence that disciplinary proceedings will be proportionate, consistent and fair.

Targeting: The Documents are targeted to ensure action is taken where necessary, which will increase compliance. Further, CLSB will continually monitor the Documents to ensure they remain fully effective at all times.

Promoting and maintaining adherence to the professional principles

“that authorised persons should act with independence and integrity”

Under the Documents Costs Lawyers are expected to ensure their independence is not compromised and that they act with integrity.

“that authorised persons should maintain proper standards of work”

Costs Lawyers are required, under the Documents, to maintain a high standard of conduct, act in the best interest of their clients and act within their competence.

“that authorised persons should act in the best interests of their clients”

The Documents clearly set out that Costs Lawyers should act in the best interest of their clients.

“that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice”

The Documents remind Costs Lawyers of their overriding duty to the Court.

“that the affairs of clients should be kept confidential”

The Document sets out that Costs Lawyers must respect confidentiality & trust.

Consultation process

CLSB went out to consultation on the Documents on Monday 9 May 2011. The consultation period closed on Friday 8 July 2011 at 5.00pm however CLSB accepted three late submissions.

Consultation responses

CLSB has prepared a Consultation Response Report under which it has listed comments received together with CLSB responses. In some circumstances, comments have resulted in a change to the Documents, in others the CLSB has not made any changes and has provided reasoning why.

Impact on other Approved Regulators

CLSB does not believe this application has any negative or detrimental impact on other Approved Regulators or on any members of the regulated community. All other Approved Regulators were consulted during the process, no such issues were raised.

Equality impact

The proposed Documents have no impact on equality and diversity and do not contradict the principles as set out in the CLSB Equality & Diversity Policy.

Proposed implementation plan

CLSB is working towards requesting ACL, through its Council, duly delegates its authority as an Approved Regulator to the CLSB, on or before 31 October 2011.

Monitoring effectiveness

CLSB will implement a system of on-going monitoring of professional standards and the effectiveness of its regulatory governance documents to ensure they meet expectations.

Submission

CLSB believes these Documents support the regulatory objectives of the LSA. CLSB therefore respectfully requests LSB approval of four new regulatory governance documents (Code of Conduct, Practising Regulations, Disciplinary Rules and Training & CPD Rules) for implementation within the Costs Lawyer profession, to be implemented with immediate effect on CLSB becoming Approved Regulator under delegated authority of ACL.

Questions on this application

Any questions arising from this application should be addressed to Lynn Plumbley (Chief Executive, CLSB) by email or post at:

Email: ceo@clsb.info

Post: Lynn Plumbley (Chief Executive)

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