

Consultation Paper: 9 May 2011

Association of Costs Lawyers/Costs Lawyer Standards Board

Proposed new governance documents on the regulation of Costs Lawyers

This consultation paper has been issued by the Association of Costs Lawyers and the Costs Lawyer Standards Board.

1. Draft documents for consultation

1.1 The following four draft documents (“Documents”) are attached to this consultation paper. They set out proposed new principles for governance on regulation within the profession of the Costs Lawyer:

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

2. Executive summary

2.1 The Association of Law Costs Draftsmen, known with effect from 1 January 2011 as the Association of Costs Lawyers (ACL) is an Approved Regulator under the Legal Services Act 2007 (LSA). The ACL is in the process of separating its representative function from its regulatory function to ensure statutory compliance and independence.

2.2 The Costs Lawyer Standards Board (CLSB) is in the process of establishing itself to undertake that regulatory function under delegated authority from the ACL and subject to LSB approval, expected to occur before 31 October 2011, latest.

2.3 The ACL/CLSB has prepared the four draft Documents to modernise and consolidate current codes, rules and regulations.

2.4 The ACL/CLSB seek to achieve a balance between ensuring that its regulated community has a set of principles and rules which conform to the professional principles set out in section 1(3) of the LSA and the need to ensure they are clear and readily understood.

3. Introduction

3.1 The Association of Law Costs Draftsmen, now known as the Association of Costs Lawyers (ACL) was founded in 1977 with the object of promoting the status and interests of the

profession of Law Costs Draftsmen and ensuring maintenance of the highest professional standards within its membership.

3.2 There are currently three levels of membership of the ACL (Student, Fellow and Costs Lawyer).

3.3 Following constitutional changes approved by the membership in 2010, by 1 January 2012 there will be only two levels of ACL membership (Trainee Costs Lawyer & Costs Lawyer).

3.4 The status of Costs Lawyer carries with it the right to conduct costs litigation and rights of audience in costs proceedings, pursuant to Sections 27 and 28 of the Courts and Legal Services Act 1990 as well as the right to administer oaths. The authority to grant these rights to those regulated by the ACL was vested in the ACL by The Association of Law Costs Draftsmen Order, 2006 (SI No 3333 of 2006) (the Statutory Instrument) with effect from 1 January 2007.

3.5 In 2010 the ACL established the CLSB to enable the ACL to separate its representational role from its regulatory role in accordance with the LSA.

3.6 The ACL is an Approved Regulator under section 20(2) of the LSA, Part 1 of Schedule 4 and the Statutory Instrument. Powers and expectations upon an Approved Regulator are set out in Sections 20 and 21 of the LSA and currently rest with the ACL. Those duties will be delegated to the CLSB in order to achieve the necessary degree of separation required by the LSA.

3.7 The relationship between the ACL and the CLSB is to 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.

3.8 Section 176(1) of the LSA obliges a regulated person to comply with the regulatory arrangements of the Approved Regulator. By the time the new regulatory framework is in place it is expected there will be approximately 500 Costs Lawyers regulated by the CLSB on behalf of the ACL.

4. Purpose of this consultation

4.1 The current constitution, rules, codes and regulations of the ACL are anachronistic and do not fully reflect the approach of the LSA toward the regulatory objectives or the professional principles both of which are set out below.

4.2 Regulatory objectives:

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

4.3 Professional principles:

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) 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, and
- (e) that the affairs of clients should be kept confidential.

4.4 Costs Lawyers practice in a wide variety of different formats. A large number 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. Yet others practice in multi-office firms which have Costs Lawyers working for them in a traditional office context.

4.5 The professional conduct of Costs Lawyers does not give rise to many service complaints or conduct breaches. Since 2001 there have been only 12 service complaints and 25 conduct complaints (approximately 40% of which issues were dismissed). This is partly a reflection of the relatively small numbers of Costs Lawyers but also of the work ethic and high standards adopted by almost all Costs Lawyers.

4.6 Complaints about the service provided by a Costs Lawyer fall within the jurisdiction of the Legal Ombudsman since it was established in October 2010.

4.7 Complaints about the conduct of a Costs Lawyer will fall within the jurisdiction of the Approved Regulator (currently ACL, soon to be the CLSB).

4.8 Further to a Memorandum of Understanding reached with the Legal Ombudsman (to come into effect on the date the ACL delegates its regulatory function to the CLSB) it has been agreed all complaints against Costs Lawyers will be referred to the Legal Ombudsman

in the first instance to enable them to evaluate whether the complaint falls within their jurisdiction in whole or part.

4.9 In the event of a hybrid complaint (part service, part conduct) it has been further agreed that the Legal Ombudsman will first deal with the service element of the complaint before the CLSB considers the conduct element unless CLSB considers the conduct in question serious in nature.

4.10 At this stage it is not intended to seek to regulate entities nor to seek a licence to regulate Alternative Business Structures. Both options may be pursued by the CLSB in the future but for the present the profession is keen to achieve full compliance within the terms of the LSA and, as part of that process, to provide a modern and clear set of professional rules.

4.11 Drafting has therefore taken the characteristics of the Costs Lawyers' profession into account with complex sets of prescriptive rules deliberately avoided.

4.12 In the light of responses to the consultation process it may be thought appropriate to amend this approach to reflect the views of those consulted with.

4.13 The four draft Documents attached to this paper does however represent a relevant starting point for a discussion about the appropriate professional rules to govern a professional body of, initially, no more than 500 individuals.

4.14 This consultation paper and all four documents are intended to provide a set of professional principles and rules which are clear and can be readily understood by Costs Lawyers and those who use their services.

5. How to respond to this consultation paper

5.1 This paper sets out the background to this consultation and addresses the issues which arise in the light of the approach taken to drafting the four governance Documents in question.

5.2 Responses must be received by CLSB by close of business (5.00pm) on **Friday 8 July 2011**.

5.3 Your responses should be sent to Lynn Plumbley (Chief Executive, CLSB) by email or post at the following addresses:

Email: ceo@clsb.info

Post: Lynn Plumbley (Chief Executive)
CLSB
Centurion House
129 Deansgate
Manchester
M3 3WR

5.4 In the event of any questions arising from this consultation paper and attached Documents please contact Lynn Plumbley at ceo@clsb.info or on 07771 663317.