

Application for approval of Costs Lawyer Practising Certificate Fee 2012 ("PCF 2012")

S.51 Legal Services Act 2007

Rule D(7) Legal Services Board Practising Fee Rules 2009

Costs Lawyer Standards Board ("CLSB")

Association of Costs Lawyers ("ACL")

1. Enclosures with this application

- (i) Consultation Paper
- (ii) Consultation Response Resume
- (iii) Draft: Application for Costs Lawyer Practising Certificate (2012)
- (iv) Draft: Costs Lawyer Fee Note (2012)
- (v) Draft: Costs Lawyer CPD Record (2012)
- (vi) Budget: ACL for 2012
- (vii) Budget: CLSB for 2012
- (viii) Accounts: Association of Law Costs Draftsmen Ltd for 2009
- (ix) Accounts: ALCD (Training) Ltd for 2009

2. Separation of regulation / representation

2.1 As required under the Legal Services Act 2007 ("LSA") the ACL is expected to delegate its regulatory role to CLSB on or around 31 October 2011. This application is therefore made by CLSB on the basis CLSB will be the approved regulator of Costs Lawyers, under delegated authority of ACL, for 2012.

2.2 Whilst CLSB will be known as the Approved Regulator under delegated authority and will undertake all roles, duties and responsibilities of the Approved Regulator, ACL will remain the Approved Regulator under s.20(2) of the LSA, Part 1 of Schedule 4 to the LSA and The Association of Law Costs Draftsmen Order 2006 (SI 2006 no 3333).

2.3 The roles of CLSB and ACL following delegation will be determined by a Memorandum of Understanding ("MOU") and Operational Protocol signed by both parties, to be reviewed on an annual / needs be basis. Under that MOU it has been agreed that any differences between CLSB and ACL may be referred to the Legal Services Board (LSB) for the resolution at any time.

3. Developing this application

3.1 The practising year 2012 will be the first year in which the CLSB is fully operative as an Approved Regulator under delegated authority with the ACL undertaking a purely representative role. The budgets have taken into account the aims and objectives of both

CLSB and ACL during 2012 but both acknowledge financial expectations are difficult to predict as the new structure will take a year or so to settle down.

3.2 ACL has agreed to look at an alternative funding model during 2012, identifying what areas of its revised role falls in and outside the definition of permitted purposes. This will be reflected in the S.51 application for PCF 2013 approval.

4. This application

4.1 This application is made for LSB approval of the proposed Costs Lawyer PCF 2012 in the total sum of £450.00.

4.2 The PCF 2012 will cover the period 1 January 2012 to 31 December 2012 inclusive.

4.3 On issue of a Practising Certificate the CLSB is authorising use the title Costs Lawyer with the right to undertake the following reserved legal activities:

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

5. Costs Lawyer numbers

5.1 For the purposes of the application, CLSB has worked on a conservative estimate of 500 Costs Lawyers for year 2012 although taking into account the current number of Fellows registered to undertake the conversion course in October and Trainee Costs Lawyers, a more realistic figure would be 560 Costs Lawyers.

5.2 As at 1 October 2011 there were 520 Costs Lawyers.

6. Historical fee levels

Year	Fee	% increase
2005	£170.00	----
2006	£175.00	2.8 %
2007	£185.00	5.4 %
2008	£250.00	26 %
2009	£250.00	0 %
2010	£400.00	60 %
2011	£450.00	12.5 %
2012	£450.00	0 %

7. Historical conduct complaint levels

Year	Conduct complaints
2005	3
2006	1
2007	2
2008	2
2009	1
2010	7
2011	3

8. Rule C.5 (Permitted purposes)

8.1 Monies raised through the PCF 2012 will be used for permitted purposes only, as set out in the budgets of CLSB & ACL attached.

8.2 As stated in 3.2 above, during 2012 ACL will undertake a project to define what percentage of its work is permitted purpose / non permitted purpose in its re-defined role.

9. Rule D.10 (a)-(d) inc. (Transparency)

9.1 After discussions with the ACL, on Monday 26 September 2011 the attached consultation paper was issued to all Costs Lawyers, Trainee Costs Lawyers and those Law Costs Draftsmen (Fellows) who had not yet converted to Costs Lawyer status. Attached to the consultation paper were:

- Budgets for 2012 for both CLSB and ACL.
- Accounts for year ended 31 December 2009 for both The Association of Law Costs Draftsmen Ltd (ACL) and ALCD (Training) Ltd.

9.2 The Accounts of CLSB for year ended 31 December 2009 were not attached as the company was dormant during year ended 31 December 2009.

9.3 The consultation paper and supporting documents were posted on the CLSB website on 28 September 2011.

9.4 The consultation paper was printed in the October issue (no.28) of the Costs Lawyer Journal, posted beginning of October 2011.

9.5 As is our policy with all documentation the consultation paper was drafted in plain English and provided Costs Lawyers with the following information:

- The level of PCF proposed for 2012.
- Information on how the PCF 2012 had been arrived at.
- An indication on how the fee would be spent.

9.6 The consultation paper highlighted reserves of both ACL and ALCD (Training) as at 31 December 2009.

9.7 The consultation process was open for a period of three weeks (to close of business on Monday 17 October 2011).

9.8 Under the consultation process comments were sought and the following four questions were raised:

1. Do you agree with the proposed level of CLSB Practising Certificate and regulation fee at £200.00?
2. Do you have any comments on the proposed activities/objectives of CLSB as outlined in paragraph 8 above and should anything else be included?
3. Do you agree with the proposed level of ACL representation fee of £200.00?
4. Do you have any comments on the proposed activities/objectives of ACL as outlined in paragraph 9 above and should anything else be included?

9.9 A resume of consultation responses is attached to this application.

10. Rule D.10(e) Explanatory notes

10.1 CLSB has endorsed explanatory notes on the reverse of the Costs Lawyer Fee Note 2012, the draft is attached to this application.

11. Rule D.11(b) Budgets

11.1 Both budgets reflect the fact ACL and CLSB are small organisations with few employees and low overheads. The ACL Council is made up of elected volunteers.

11.2 Based on 500 Costs Lawyers the CLSB and ACL would receive an income of £100,000. Based on 560 Costs Lawyers the CLSB & ACL would both receive an income of £112,000. ACL has nominal income from Trainee Costs Lawyers and nominal income from retired Costs Lawyers.

11.3 The PCF 2012 is intended to provide adequate funding to provide for a regulatory regime that has the following characteristics in that it will be:

- a) proportionate;
- b) accountable;
- c) consistent;
- d) transparent; and
- e) targeted.

11.4 The PCF 2012 will allow CLSB to achieve the following 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.

11.5 The PCF 2012 will allow CLSB to promote the following professional principles:

- (i) that authorised persons should act with independence and integrity;
- (ii) that authorised persons should maintain proper standards of work;
- (iii) that authorised persons should act in the best interests of their clients;
- (iv) 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
- (v) that the affairs of clients should be kept confidential.

11.6 The PCF 2012 will enable CLSB to meet its objectives which include, inter alia:

- Setting and maintaining professional standards within the profession.
- Ensuring statutory compliance as an Approved Regulator under delegated authority.
- Managing risks within the profession.
- Gathering and analysis statistical information within the profession.
- Investigating the possibility of entity regulation.
- Considering a Mark of Regulation / Seal of Regulation under which Costs Lawyers can represent themselves to distinguish themselves from Law Costs Draftsmen.
- Increasing the number of Costs Lawyers.

12. Rule D.11(c) Breakdown of fee

12.1 Under the consultation process, the consultees were advised the whole amount of the PCF 2012 was payable to CLSB but that it would be divided as follows:

CLSB: Practising Certificate & regulation	(for retention and use by CLSB)
CLSB: Provision for Legal Services Board / LeO levy	(CLSB will pay this to LSB)
ACL: Representation	(CLSB will pay this to ACL)

12.2 Under the draft Costs Lawyer Fee Note 2012 attached to this application the total fee payable has been broken down as follows:

CLSB: Practising Certificate & regulation	£200.00
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CLSB: Provision for Legal Services Board / LeO levy	£50.00
ACL: Representation	£200.00

13. Rule D.11(d) Contingency funds

13.1 CLSB has included a contingency sum in its budget of £5,000, approximately 4% of its overall budget for 2012.

13.2 During 2011, the CLSB board agreed a reserve policy of £35,000 to deal with any unforeseen future expenditure. During 2011, CLSB deposited £35,000 into a CLSB Reserve Account. That amount will remain as a reserve going forward.

13.3 CLSB has also deposited the sum of £15,000 paid by ACL for the 15,000 ordinary £1.00 shares in issue, into the CLSB Reserve Account.

13.4 CLSB may also seek additional funding from ACL if required. As disclosed, ACL has adequate reserves in the event of unforeseen regulatory re-prioritisation. ACL had reserves as at year ended 31 December 2009 of £231,547. ALCD (Training) had reserves as at year ended 31 December 2009 of £105,430. Both of those reserve figures increased as at year end 31 December 2010 however the accounts for year ended 31 December 2009 were used as the consultation process was initiated before accounts for year ended 31 December 2010 were required to be filed (i.e. 31 September 2011).

14. Rule D.11(e) 2011 spend on permitted purposes

14.1 Income based on 256 Costs Lawyers (during 2011 Fellows were undertaking the conversion course to Costs Lawyers) having paid a fee of £450.00 including LSB Levy.

14.2 Total revenue received for permitted purposes: £115,200.00 during 2011.

14.3 The allocation of 2011 revenue expressed as a broad percentage as follows: -

Permitted purpose	Spend	Notes
Rule 6(a): The regulation, accreditation, education and training of applicable persons and those either holding themselves out as or wishing to become such persons, including: <ul style="list-style-type: none"> (i) the maintaining and raising of their professional standards; and (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such 	55%	For the purpose of on-going training and maintaining professional standards: <ul style="list-style-type: none"> • Seminars • Conferences • CPD • Conduct complaints

persons.		
Rule 6(b): The payment of a levy imposed on the Approved Regulator under section 173 of the Act and/or the payment of a financial penalty imposed on the Approved Regulator under section 37 of the Act.	5%	To reflect the collection and distribution of the Levy
Rule 6(c): The participation by the Approved Regulator in law reform and the legislative process.	10%	Providing responses to the consultation process
Rule 6(d): The provision by applicable persons, and those either holding themselves out as or wishing to become such persons, of legal services including reserved legal services, immigration advice or immigration services to the public free of charge.	0%	
Rule 6(e): The promotion of the protection by law of human rights and fundamental freedoms.	0%	
Rule 6(f): The promotion of relations between the Approved Regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions.	25%	To reflect: <ul style="list-style-type: none"> • setting up of the working group to consider the implementation Lord Jackson’s reforms and the format of a new bill of costs • interaction with the LSB • implementation of guidance from LeO to the membership
Rule 6(g): Increasing public understanding of the citizen’s legal rights and duties.	5%	Commencing awareness campaign for public interaction via the web site
Total	100%	

15. Rule D.11(f) Regulatory & diversity impact assessment

15.1 Both budgets for 2012 take into account issues relating to equality and diversity. By not increasing the PCF 2012 from that paid in 2011, it ensures that those paying do not experience a fee which deters any qualified Trainee Costs Lawyer from applying.

16. In conclusion

16.1 Costs Lawyers practice in a wide variety of different formats, a large number practice from home as sole practitioners, others work in-house for large firms of solicitors or institutions. During 2012, CLSB will be undertaking work to better identify how Costs Lawyers are employed.

16.2 The work ethic and high standards adopted by Costs Lawyers means the professional conduct of Costs Lawyers does not give rise to many conduct complaints.

16.3 Budget setting has taken the low level of conduct complaints into account. CLSB is therefore pleased to be able to advise there is no proposed increase in PCF 2012 from that paid in 2011.

16.4 CLSB respectfully requests LSB approves the Costs Lawyer PCF 2012 in the sum of £450.00.

17. Contact

Any request for clarification on this application should be addressed to:

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