

Application for approval by the Legal Services Board

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

An application for the approval of

- (i) Proposed governance arrangements by CLSB on the regulation of Trainee Costs Lawyers with effect from 1 January 2013.
- (ii) Proposed amendment to Costs Lawyer CPD Rules with effect from 1 January 2013.

Application authority

The application as set out herein 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:

Documents consulted on

1. Consultation Paper (11 September 2012)
2. Consultee List
3. Consultation Response Report
4. Trainee Costs Layer Code of Conduct
5. Trainee Costs Lawyer Disciplinary Rules & Procedures
6. Trainee Costs Lawyer Training & CPD Rules
7. Costs Lawyer CPD Rules

Documents proposed for approval following consultation:

8. Trainee Costs Lawyer Code of Conduct (*revised following consultation*)
Disciplinary Rules & Procedures (*as above*)
9. Trainee Costs Lawyer Training & CPD Rule (*revised following consultation*)
10. Costs Lawyer CPD Rules (*revised following consultation*)

Also enclosed are:

11. Current Training & CPD Rules

Introduction

The roles of representation (Association of Costs Lawyers) and regulation (Costs Lawyer Standards Board) were separated on 31 October 2011 for the Costs Lawyer profession.

There are now only status acknowledged within the profession:

- Costs Lawyer
- Trainee Costs Lawyer

On 31 October 2011, CLSB undertook the full role of regulation of Costs Lawyers and set the training standard of Trainee Costs Lawyers (referred to herein as “Trainees” or “Trainee”) under its Training & CPD Rules.

As the year has progressed and CLSB became confident the processes and procedures it has put in place are fit for purpose, CLSB sees the natural progression as being to now take on the regulation of Trainees.

There are currently approximately 300 Trainees.

Basis of the application

RISK: Trainees are required to achieve three years qualifying experience (in costs law and practice as an employee of an authorised person e.g. Costs Lawyer, Solicitor) as well as successfully completing the three year modular course. Most Trainees have costs law employment whilst studying hence the reason CLSB believes it is right that Trainees who practice as they study should sign up to regulation by CLSB abiding by the same level of professional expectation as their fully qualified colleagues.

CLSB does not believe there is currently an adequate, sufficiently robust or transparent regulatory process in place for Trainees under the professions representative body or its educational subsidiary ACL Training.

CONSUMER PROTECTION: CLSB believes that the processes and procedures it proposes to put in place in relation to Trainees will provide greater consumer awareness, confidence and protection and that the consumer would expect nothing less of us as a regulator.

Proposed new regulatory governance documents for Trainees

Under CLSB proposals the following will be implemented which will provide a clear, tight and transparent regulatory process:

- Trainees will have their own standalone and clearly defined Code of Conduct which mirrors to a great extent the Code in operation for a fully qualified Costs Lawyer.
- Trainees will have their own standalone and clearly defined Training & CPD Rules.
- Trainees will have their own, standalone and clearly defined disciplinary rules and procedures.
- All Trainee governance documents will be available for public access on the CLSB website.
- The register of Trainees will appear on the CLSB website alongside the Register of Costs Lawyers with a practising certificate so consumers can (i) check the level of qualification of the persons dealing with their instruction, and (ii) be assured they

are signed up to a professional code, with defined processes for recourse to CLSB on conduct matters.

- Risks presented by Trainees will be subject to CLSB management and review thus affording greater consumer protection.
- Trainees will be subject to random CPD audit.
- Trainees will receive the benefit of Law Care cover, which affords them support in time of crisis as a result of stresses faced in the legal profession.

Proposed fee for Trainee Costs Lawyer regulation

Whilst CLSB understands it does not require LSB approval of any proposed fee to be charged for the regulation of Trainees, we wish however to be clear and transparent on what the proposed £100 annual fee will cover:

- Required review/amends to Trainees regulatory documentation and arrangements as required.
- Annual quality assurance audit of the Costs Lawyer three year modular course.
- Annual quality assurance audit of the Costs Lawyer examination.
- Random audit of Trainees CPD records.
- Representation and risk management by CLSB in areas where the Trainee is exposed e.g. new LSC pilot scheme on Legal Aid Bills.
- Contribution towards maintenance of CLSB website.
- Contribution towards Conduct Committee & Conduct Appeal Committee costs as required.
- Annual analysis of Trainee community e.g. equality & diversity.
- Contribution towards executive and board time on educational issues.
- LawCare cover.

CLSB is currently undertaking a feasibility study on the possibility of entity regulation. If the CLSB endorses such a proposal the regulation of Trainees will fall to the CLSB then anyway if employed by a CLSB regulated entity.

Impact on regulatory objectives

The proposal and proposed new documents have been drafted with the consumer interest in mind.

Protecting and promoting the public interest: As Trainees earn and learn at the same time the proposal sets out a clear understanding of the professional standard expected of a Trainee whilst practising under Trainee status. By defining the professional standard expected from Trainees, this will in turn protect public interest.

Supporting the constitutional principle of the rule of law: The proposed governance arrangements require Trainees to uphold the rule of law.

Improving access to justice: Justice can be accessed through both a Trainee and Costs Lawyer.

Protecting and promoting the interests of consumers: The documents set out the professional standard expected of Trainees whilst learning whilst practising.

Promoting competition in the provision of services: The proposal seeks to set a level playing field for all Trainees and Costs Lawyers in terms of professional expectation.

Encouraging an independent, strong, diverse and effective legal profession: CLSB believes that by bringing Trainees inside of its regulatory regime they will feel more engaged in the profession thus ensuring a stronger future.

Increasing public understanding of the citizen's legal rights and duties: The proposals allow for the consumer to have redress through CLSB in the event they feel a Trainee Costs Lawyer has fallen short of the professional standard expected of them.

Compliance with Better Regulation Principles

Whilst CLSB accepts Trainees are not authorised under the LSA, CLSB believes that by including them in the Costs Lawyer regulatory regime this offers a full and rounded approach to the Better Principles of Regulation.

Transparency: CLSB engaged in wide ranging consultation on the proposal. CLSB proposes the register of Trainees and all Trainee governance documents will appear on its website.

Accountability: CLSB believes the proposal encapsulate an outcome focused approach to regulation and that they offer clarity and transparency to Trainees, the Judiciary, those who employ them, Costs Lawyers, the consumer, the LSB and the legal regulated community.

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

Targeting: Such a proposal will allow CLSB to monitor risks, strengths and weaknesses at Trainee level of the profession. CLSB continually monitors and reviews its processes and procedures to ensure they remain fully effective at all times.

Outcomes focus

If CLSB were to take on the full regulation of Trainees it would allow for a rounded outcomes driven approach to regulation across the profession. Outcomes on Trainee regulation would be reported to the CLSB board which in turn will drive future policy decisions and the CLSB risk matrix (business risk/consumer risk/profession risk). That information could also then be inputted into the Oxera framework.

By owning the database of Trainees CLSB will be free to communicate with Trainees, include them in surveys of the profession and consultations, as deemed appropriate.

When a Trainee becomes authorised under the LSA

For sake of clarity and certainty CLSB has added an additional paragraph for LSB consideration under its proposed Training & CPD Rules for Trainees.

That the affairs of clients should be kept confidential

The proposal will afford the consumer greater confidence in this requirement.

Character & suitability clause

This clause appears in the current rules and CLSB proposes it remains for the following reasons:

- Trainee Costs Lawyers mostly study whilst practising.
- Even if study & practice is not simultaneous, three years relevant experience is required before Costs Lawyer status can be achieved.
- It would be wrong not to be clear at the outset of study what these criteria are. If these criteria were to be at Costs Lawyer level only then a Trainee Costs Lawyer could have spent three years and a lot of money studying for a qualification they could not put into practice under a Costs Lawyer practising certificate.

Consultation process

CLSB went out to consultation on Tuesday 11 September 2012 and consultation closed on Tuesday 23 October 2012.

As the period of regulation is proposed to take effect for 1 January 2013, not only a calendar year but in-line with the regulatory year for a Costs Lawyers, the period of consultation was 6 weeks because of the short timescales CLSB has left to work within. CLSB believes this was adequate for the following reasons:

- The proposal does not affect Costs Lawyers.
- The proposal does not affect the wider legal community.
- It is the view of the CLSB the proposal offers consumer experience betterment, not detriment.
- From evaluation of previous consultation experience the majority of input is received in the first week or so, with a small number at the end of the consultation period. The middle period shows no activity so whether 6 weeks or 12 weeks, CLSB expects activity in the first two weeks and the last.
- Also from evaluation of previous consultations, there has been little interest from those consulted with. One comment made verbally was that a person felt "*all consulted out.*" Sometimes common sense has to prevail over bureaucracy.

In the spirit of transparency CLSB has prepared a Consultation Response Report under which it has listed comments received together with CLSB responses where considered appropriate. CLSB was pleased the ACL President inputted into the process and was in

support. In some circumstances, comments have resulted in a change to the proposal/documents, in others the CLSB has not made any changes and has provided reasoning why.

Impact on other Approved Regulators

CLSB does not believe the proposal 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

CLSB does not believe the proposal will have any negative impact on equality and diversity nor does it contradict the principles as set out in the CLSB Equality & Diversity Policy. In fact, by CLSB having ownership of the Trainee database it will be able to communicate with the Trainee community freely on an annual equality and diversity survey.

Proposed implementation

CLSB seeks to implement its proposals to take effect on 1 January 2013, to do this it will need to have all required forms typeset and posted by 1 December 2012.

Monitoring effectiveness

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

Submission

CLSB believes this proposal is entirely sensible and supports regulatory objectives for reasons set out herein. CLSB therefore respectfully requests LSB approval of the proposal and documentation.

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)

CLSB, Centurion House, 129 Deansgate, Manchester, M3 3WR

Phone: 0161 214 7904

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25 October 2012