

Application by the Costs Lawyer Standards Board
for approval by the Legal Services Board of change to regulatory arrangements
Revision of the Costs Lawyer Code of Conduct

Attachments to this application:

1. Consultation paper
2. Consultee list
3. Consultation response report
4. Proposed revised Code of Conduct (consulted on)
5. Proposed revised Code of Conduct (following consultation)
6. Current Statement of Rights

Application

The Costs Lawyer Standards Board (the “CLSB”) make this application to the Legal Services Board (the “LSB”) pursuant to Schedule 4, Part 3 of the Legal Services Act 2007 (the “LSA”).

CLSB seeks approval of a revised Costs Lawyer Code of Conduct to now include the Statement of Rights, re-written to be current and under the correct title of Authorised Rights. CLSB further seeks to introduce a new Principle of 1.2 to ensure clarity and understanding as regards integrity and professionalism based on those Authorised Rights.

Save for the introduction of a new Principle numbered 1.2 this is not an increase in regulation but clarification on the existing Statement of Rights following changes in costs law and practice since 2007.

Background

Under the Association of Costs Draftsmen Order 2006, SI 2006 no 3333 (the “2006 Order”) the Association of Law Costs Draftsmen, now known as the Association of Costs Lawyers (the “ACL”), was designated an authorised body for the purposes of s27 & s28 of the Courts and Legal Services Act 1990.

Following an application by the ACL to the Lord Chancellor in June 2003, the rights set out in the attached Statement of Rights were extended to Costs Lawyers as a consequence of the 2006 Order, which came into effect on 1 January 2007.

The Statement of Rights afforded greater clarity on what rights had actually been afforded Costs Lawyers under the three reserved legal activities set out below.

The 2006 Order was revoked under the Legal Services Act 2007 (Commencement No. 6, Transitory, Transitional and Saving Provisions) Order 2009. Authority of the ACL as an Approved Regulator continued however under Schedule 4, Part 1(1) of the LSA in relation to the following reserved legal activity, Authorised Rights:

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

On 31 October 2011, the CLSB became an Approved Regulator in relation to the above reserved legal activity rights under delegated authority of the ACL. The existing Statement of Rights was re-dated 31 October 2011 under the name of the CLSB.

The 2006 Order was sought at a time when the role of a Costs Lawyer, then known as Costs Draftsman, had remained largely unchanged (preparing & opposing Bills of Costs save for the costs preparation undertaken at the interim stages of proceedings as introduced by the Civil Procedure Rules in 1999, namely statements for summary assessment and costs estimates.) Since then, legislation has been implemented which change the principles of law and practice as to costs recovery, in particular court procedure for the management of costs and the introduction of costs budgeting within Civil Procedure Rule changes on 1 April 2013.

In April 2013, the rights as currently set out under the Statement of Rights were considered by both the ACL and CLSB to be too prescriptive in nature and insufficiently flexible to accommodate procedural change.

On 25 April 2013, CLSB asked of the LSB as follows: *“Following changes to CPR Rules it looks as if we are going to have to seek amendments to the Statement of Rights (attached) which were I believed thrashed out between ACL and the Lord Chancellors Department back in July 2007. What would be the current process for seeking a change, is it back to them or does jurisdiction now fall with LSB?”*

On 26 April 2013, LSB responded: *“we need to determine if these are regulatory arrangements and whether any changes falls within our jurisdiction for approval”*

On 1 May 2013, LSB advised: *“I have discussed this with policy colleagues and our legal counsel and we are of the view that the SOR documents seem to be simply a list of legislation and other references to rights of audience. Therefore they are unlikely to be “regulatory arrangements” as these documents do not, of themselves, make any arrangements.”*

It appeared therefore to CLSB that if the Statement of Rights was to be revised it would not require LSB approval. However, CLSB were of the view that the Statement of Rights should be re-titled Authorised Rights and be embedded in the Costs Lawyer Code of Conduct. As a result of this, CLSB also identified the need for a new Code of Conduct Principle 1.2 to ensure clarity that a Costs Lawyer may not undertake a reserved legal activity other than one they are authorised by the CLSB to undertake.

Basis of the application

The risks identified which initiated this review and subsequent application were as follows:

- The current Statement of Rights was issued in July 2007, it was considered out of date in that it had not taken into account significant rule changes since that date.
- Greater clarity for Costs Lawyers, the judiciary and the consumer on Authorised Rights and what they mean in reality.
- Greater enforceability: By changing the title from being a Statement of Rights to Authorise Rights and bringing them in under the Code of Conduct, this affords greater enforceability.

Impact on Regulatory Objectives

(a) Protecting and promoting the public interest

The application ensures a clear point of reference, clarity of understanding and transparency for not just the profession but the public.

(b) Supporting the constitutional principle of the rule of law

The rules and regulations applicable to Costs Lawyers emphasises the duty on Costs Lawyers to support the constitutional principles of the rule of law. This application ensures there is clarity on what the three reserved legal activities actually mean in practice under current law.

(c) Improving access to justice

The application provides greater clarity for Costs Lawyers, the judiciary and the consumer and therefore assists in access to justice.

(d) Protecting and promoting the interests of consumers

By including the Authorised Rights in the Costs Lawyer Code of Conduct there is greater clarity and transparency for the consumer.

The application ensures consumer protection for the following reasons:

- It changes the title of the Statement of Rights to being Authorised Rights for clarity of understanding.
- It makes the definition of those rights current.
- Its offers greater transparency.
- It provides for consistency of application.

(e) Promoting competition in the provision of services

The application has no impact on competition.

(f) Encouraging an independent, strong, diverse and effective legal profession

Costs Lawyers are an independent part of the legal profession. Analysis evidences that it is diverse profession which is effective in its delivery. This application serves to further evidence that independence, effectiveness and diversity.

(g) Increasing public understanding of the citizen's legal rights and duties

CLSB is committed to creating public awareness of the law and practice relating to legal costs. This application is consistent with that approach as it seeks to assist the public in understanding the role and legal rights under prevailing law. As is the policy of CLSB, the Code of Conduct is written in plain English.

Compliance with Better Regulation Principles

The application follows the principles set out under s28(3) of the LSA as follows:

(i) Transparency

CLSB engaged in a wide ranging consultation, the attached consultee list indicates all those CLSB issued the consultation paper to. Due to the nature of the application, CLSB included the Costs Judges of the SCCO in this consultation, who responded. Above this, only five Costs Lawyers responded (all in support) indicating this application causes none of the other Approved Regulators or indeed the consumer any cause for concern.

(ii) Accountability

CLSB believes the application encapsulates an outcome focused approach to regulation with accountability to CLSB on professional standard. By including the definition of Authorised Rights in the Code of Conduct there is greater clarity of understanding and accountability over the professional service and conduct provided by Costs Lawyers.

(iii) Proportionality & consistency

The application is proportionate as it simply reviews and updates the existing Statement of Rights. It does not introduce additional regulation or regulatory expectation. The introduction of new Principle 1.2 simply reinforces the statutory offence under s14(1) of the LSA to carry on a reserved legal activity without authorisation.

(iv) Targeted

The application is targeted at regulated Costs Lawyers in order to ensure the quality of the professional services that they provide is maintained.

Outcomes focused

Following significant CPR changes in April 2013, CLSB became aware of the need for the Statement of Rights to be revised to ensure it was current.

Consultation process

CLSB went out to consultation between 22 November 2013 and 31 January 2014. CLSB has attached a consultation response report to this application under which all comments received have been logged, together with CLSB responses which were considered

appropriate. The consultation was favourable to the application. The revision to the draft Code of Conduct consulted on indicates CLSB has listened and responded as appropriate.

Impact on other Approved Regulators

CLSB does not believe the application will have any impact, positive or negative, on other Approved Regulators. All other Approved Regulators were consulted during the process, no issues or concerns were raised by them.

Equality impact

CLSB does not consider that the application contradicts principles set out in the CLSB Equality & Diversity Policy.

Monitoring effectiveness

CLSB will continue to monitor, on an ongoing basis, the Authorised Rights as set out in the revised Code of Conduct to ensure they remain current.

7. Submission

CLSB believes the application is in the best interest of both the profession and the consumer (both professional and lay) and supports its regulatory objectives for reasons set out herein. CLSB therefore respectfully requests LSB approval.

Questions or requests for clarification regarding this application

Any questions arising from this application should be sent to CLSB by email or post at:

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Date of filing

7 March 2014