

Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 (the "Act").**

The LSB's decision is to grant in full the application from the Costs Lawyer Standards Board ("CLSB") to make changes to its regulatory arrangements in respect of its Continuing Professional Development ("CPD") Rules, which are rules contained in the CLSB Handbook.

The amended rules seek to:

- Give discretion to Cost Lawyers to undertake appropriate CPD activity, by (i) removing a list of activities that count towards CPD and (ii) removing caps on the number of points attainable for each type of activity.
- Reframe the mandatory requirement for Costs Lawyers to achieve 12 CPD hours (or points) of training per year, as a minimum standard.
- Clarify that normal practice does not contribute to CPD.
- Remove the list of organisations and persons able to provide CPD training.
- Remove the requirement for mandatory accreditation for Costs Lawyers to provide training and introduce a voluntary training register.
- Introduce random audits to check Costs Lawyers' own records and CPD objectives.

Following the assessment of the CLSB's application, the LSB has concluded that the changes do not trigger any of the refusal criteria set out within paragraph 25(3) of Schedule 4 to the Act.

Decision notice

The CLSB application for approval of changes to its regulatory arrangements in respect of its CPD Rules.

1. The LSB has granted an application from the CLSB for alterations to its CPD Rules.
2. This decision notice sets out the decision taken, including a description of the changes.
3. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Association of Costs Lawyers (“ACL”) is an approved regulator for the costs lawyer profession and the CLSB is the regulatory arm to which the ACL has delegated its regulatory functions.
4. This notice sets out the decision taken, including a description of the changes. The notes at page 7 of this notice explain the statutory basis for the decision.
5. The chronology of the LSB’s handling of this application is set out below.

Chronology

- The LSB confirmed receipt of an application from the CLSB on 28 April 2020.
- The 28-day initial decision period for considering the application ended on 25 May 2020.
- On 19 May 2020, the LSB issued an extension notice¹, which extended the initial decision period to 26 July 2020.
- This decision notice is effective from 17 June 2020.
- The decision notice will be published on the LSB’s website by 19 June 2020.

Background

6. The CPD Rules are published in the CLSB Handbook and determine how a Costs Lawyer should continuously develop their knowledge and skills throughout their career. In the current regulations, Costs Lawyers are encouraged to plan and evaluate their CPD activity according to their development requirements as these emerge from their practice. Nevertheless, CLSB set out in its application that in late 2019 it reviewed its CPD approach to ensure these Rules provide sufficient reassurance that Costs Lawyers embrace continuing competency throughout their career. The CPD rules were last amended in June 2017.
7. The CLSB is proposing to introduce targeted changes to the current CPD Rules to make them more outcomes-focused and to ensure they remain fit for purpose. This is proposed to be achieved by encouraging Costs Lawyers to focus on their individual professional developmental needs, while also providing a practical framework for Costs Lawyers to follow.

¹ https://www.legalservicesboard.org.uk/wp-content/uploads/2020/05/CLSB_Extension-notice-on-CPD-rules-application.pdf

8. In considering the proposed amendments to the CPD Rules, the CLSB has taken into account the LSB's current guidance on regulatory arrangements for education and training,² and also the LSB's regulatory performance assessment of the CLSB in 2019³. In the latter, the LSB highlighted that the CLSB needs "to consider implementation of a revised approach to CPD".
9. The CLSB also took into consideration the LSB's current call for evidence on the ongoing competence of legal professionals.⁴ The CLSB decided that it would proceed with its CPD reforms prior to the LSB publishing its conclusions from the analysis of the evidence in 2020/21. The CLSB explained that its reforms would facilitate a rapid and positive change for a refreshed outcomes-based approach to CPD, and this would in turn align with the CLSB's regulatory performance objectives. Notwithstanding this, the CLSB aims to re-evaluate its approach when the LSB has published conclusions from its ongoing competence work.
10. In its current application, the CLSB seeks to permit Costs Lawyers to determine the subjects for their learning and development that count towards their CPD. There would no longer be a cap on the number of points that each subject may carry. Other amendments are also proposed to clarify the minimum CPD hours' required, to highlight which activities may contribute to CPD and to set out the procedures to follow to be able to provide CPD training as a non-CLSB accredited Costs Lawyer or other legal professional.
11. Consultation on the proposed changes took place from 4 December 2019 to 2 February 2020. Respondents were largely in support of the proposals. In March 2020, the CLSB published a consultation outcome report and a copy has been provided with the application. The report provides details on the CLSB's consideration of consultation responses, including its rationale for revising its proposals or maintaining its existing position.
12. The CLSB intends to implement the changes from 1 January 2021.

Summary of proposed changes

CPD activities

13. The CLSB will remove the list of specified activities that contribute to CPD for Costs Lawyers. Further, there will no longer be a cap on the number of points that Costs Lawyers obtain from any single activity. New Rule 3 will instead set out a non-exhaustive list of activities that Costs Lawyers can choose to include within their CPD. It also stipulates that a Costs Lawyer will be given discretion to undertake activities which better reflect their individual needs. CLSB states that is in keeping with other developments concerning CPD in the legal sector and aligns with the LSB's guidance on a more flexible and outcomes focused approach.

Minimum CPD hours/points requirement

14. Revisions to Rules 1 to 3 reframe the points/hours minimum standard that a Costs Lawyer should obtain within a CPD year. In particular, Rule 1.3 now states that CPD activity needs to be

²https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

³ Outcome RA1 (Regulatory Approach 1): <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/09/Final-CLSB-Regulatory-Performance-Assessment-Update.pdf>

⁴ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-ongoing-competence-call-for-evidence-1.pdf>

obtained in accordance with Rules 2 and 3. Rule 2 now requires Costs Lawyers to set objectives for their CPD training, evaluate against such objectives and maintain corresponding records. Rule 3.1 now sets out a non-exhaustive list of activities that may count towards CPD, while Rule 3.3 sets out the activities that may not. Notwithstanding these broadening changes, Rule 1 still retains the requirement to obtain a minimum of 12 CPD training hours.

Costs lawyers' normal practice does not count towards CPD

15. New Rules 3.3(a)-(b) clarifies that normal practice (such as routine practice and work that is charged to a client) cannot count towards CPD. The CLSB decided upon this rule because it considers that CPD training ought to be separate and distinct from day to day work. In reaching this decision, the CLSB considered and reflected upon evidence from the different CPD approaches adopted by the BSB and the SRA⁵.

Removal of list of organisations and persons providing CPD training

16. According to current Rule 2.2, the CLSB retains a list of organisations and persons that are licenced to provide CPD training. The CLSB proposes to remove this list, which it considers has become too broad to serve any regulatory purpose. The new regulatory arrangements will instead allow Costs Lawyers to choose from a wider range of external training providers. Nevertheless, the CLSB will still expect Costs Lawyers to assess for themselves that any external training is appropriate to individual development needs.

Removal of requirement for mandatory accreditation for Costs Lawyers for CPD purposes

17. The CLSB is proposing to remove the requirement for mandatory accreditation for Costs Lawyers providing CPD training. The application notes that this is to remove an accreditation barrier which does not exist in other legal professions. This will be replaced by a voluntary register, which may continue to provide reassurance of the quality of training but, at the same time, will not impose a restriction on the provision of training by other participants in the market. The application also sets out that the switch to a voluntary accreditation scheme will not require any material changes, i.e. the fee of £100 for receiving accreditation for three years will remain the same and the Costs Lawyers already on the mandatory accreditation scheme will be transferred to the voluntary register for the duration of their three-year accreditation. The CLSB plans to reassess any further requirements for the voluntary scheme in the next 12 to 18 months.

Audits of individual costs lawyers' evidence on CPD and waiver

18. The CLSB proposes a new Rule 4 that will require Costs Lawyers to submit upon request by the CLSB, a written record of CPD undertaken in the CPD year. New Rule 4 will also provide the CLSB with a discretion to waive all parts of the Rules if it considers that exceptional circumstances have justifiably prevented a Costs Lawyer from meeting their CPD requirements.

Key issues considered in the assessment of the application

19. We welcome the CLSB's approach in making these changes to provide greater flexibility for Costs Lawyers to adopt a more outcomes focused approach for their CPD activities.

⁵ Further rationale is documented within paragraphs 34 to 35 of the CLSB's application:

<https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/CLSB-rule-change-application-with-annexes-CPD-Rules-28-April-2020.docx.pdf>

20. We recognise that these changes are being made in part to address concerns identified by the LSB in its assessment of the CLSB's regulatory performance, particularly in relation to outcome RA1 under our framework.⁶ Following this application, the LSB will continue to follow up with the CLSB through the LSB's regulatory performance framework.

CPD activities

21. We acknowledge the greater flexibility that the proposed CPD framework offers to Costs Lawyers. The switch to a more flexible approach for achieving CPD removes the rigid incentive to attain 12 CPD points without considering whether the substance of the training is fully appropriate and relevant for each Costs Lawyer.
22. We considered the implication of there being no requirement for the Costs Lawyers to engage with all the learning categories that would have previously been covered during a CPD year. We sought assurances from the CLSB as to how it will remedy the risk that Costs Lawyers might undertake training from within the least challenging CPD categories.
23. In its response, the CLSB explained that the reforms also intend to require Costs Lawyers to identify their learning objectives and demonstrate how they have materialised. Primarily this will happen through the annual CPD process. If an inaccurate CPD record is produced by a Costs Lawyer, the CLSB will consider whether disciplinary action should be taken. Also, the CLSB noted that discouraging less challenging CPD training could be facilitated by providing guidance to employers (currently the CLSB cannot impose obligations on employers as it does not regulate entities). The CLSB aims to include advice to assist employers to promote the new approach to CPD when it comes into effect from 2021. We are satisfied with this explanation.
24. We also asked the CLSB to provide details about its proposal in Rule 3.2 to retain its current approach to award two CPD points for membership of the Association of Costs Lawyers (ACL) and six points for attendance at ACL conferences. We considered that the CLSB's removal of the exhaustive list of CPD course providers from Rule 2.2 should have additionally extended to any reference to the ACL conference specifically. We also did not agree that ACL membership alone should be a sole basis for awarding CPD points. In its reply, the CLSB agreed to delete proposed Rule 3.2. The CLSB has also proposed to amend its guidance to address the concerns we raised regarding the ACL conference, and to provide a general indication as to how a Costs Lawyer may use their ACL membership to obtain CPD points.
25. We are satisfied with CLSB's explanation and removal of the rule which made explicit reference to the award of CPD points from ACL membership and conferences.

Minimum CPD hours/points requirement

26. We asked the CLSB about the minimum mandatory 12hour (or point) CPD standard and to demonstrate how it will further encourage Costs Lawyers to go beyond this requirement where it would be beneficial. The CLSB explained that their rationale is to present a reformed CPD approach that combines a minimum hours requirement with guidance and materials that encourages Costs Lawyers to plan their individualised CPD activities. In addition, by maintaining the minimum requirement of 12 CPD hours, the CLSB noted that it would mitigate the risk of falling below this duration. The CLSB also considered that the review scheduled to take place

⁶ <https://www.legalservicesboard.org.uk/our-work/regulatory-performance#regulatory-performance-assessment-process>

after three to four years will provide an opportunity to revisit the imposition of this minimum hours requirement.

Monitoring and evaluation

27. The CLSB will review the effectiveness of the new arrangements through its annual audit process. In addition, over the first three years, the audit process will gather valuable evidence that could help identify specific patterns that Costs Lawyers follow in choosing CPD and will enable the CLSB to devise strategies to address any concerns as they arise. Further, the CLSB has stated that it will take into account the results of the LSB's forthcoming review of ongoing competence and determine whether any further reforms of its regulatory arrangements for CPD will be required. We consider this approach to be reasonable.

Decision

28. The LSB has considered the CLSB application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.

29. **Annex A** of this decision notice contains a copy of the amended CPD rules which have been approved by the LSB (amendments shown in red).

Matthew Hill, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules⁷ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

⁷ LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018

[https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(2\)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

Annex A

Continuing Professional Development (CPD) Rules



Effective date: 1 January 2021

Costs Lawyer Standards Board



These rules relate to the continuing professional development (CPD) of a Costs Lawyer authorised and regulated by the Costs Lawyer Standards Board (CLSB) and replace all other CPD rules previously issued by the CLSB. A Costs Lawyer is required to continuously develop their knowledge and practical skills to ensure they operate to the standard expected of them in the Costs Lawyer Code of Conduct. These rules should be read in conjunction with prevailing guidance on CPD issued by the CLSB.

1. Achieving CPD

1.1 CPD is activity undertaken in accordance with these rules over and above a Costs Lawyer's routine practice to develop their skills, knowledge and professional standards as a Costs Lawyer.

1.2 The CPD year is a calendar year (1 January to 31 December).

1.3 A Costs Lawyer must achieve a minimum of 12 CPD points in a CPD year, unless rule 1.4 applies. CPD points can be achieved by carrying out CPD activity, in accordance with rules 2 and 3.

1.4 In the event that a Costs Lawyer:

- (a) qualifies part way through a CPD year;
- (b) is reinstated part way through a CPD year; or
- (c) takes long term leave during a CPD year,

the Costs Lawyer will be required to achieve a minimum of one CPD point for each full month worked during that CPD year.

1.5 In accordance with the CLSB's Practising Rules, the CLSB may refuse to renew a Costs Lawyer's practising certificate or may issue the practising certificate subject to conditions where a Costs Lawyer has failed to comply with CPD requirements.

2. Planning, evaluating and maintaining records

A Costs Lawyer is required to:

2.1 Identify their training needs and set objectives for their CPD in light of their responsibilities and of the principles in the Code of Conduct.

2.2 Evaluate the effectiveness of the CPD carried out against those objectives.

2.3 Keep a written record of the matters required by rules 2.1 and 2.2 and of the CPD undertaken during a CPD year.

- 2.4 Submit a CPD record on the prescribed form to the CLSB upon request and co-operate fully with the CLSB in the annual CPD audit process, **including by providing the CLSB with the written records required to be kept under rule 2.3.**
- 2.5 Keep evidence of CPD achieved for two years from the end of the CPD year.

3. CPD activities

- 3.1 The following is a non-exhaustive list of activities that can be included within CPD, with each full hour engaged on an activity counting as one CPD point:
 - (a) attending a conference, seminar or roundtable discussion;
 - (b) attending training, including in-house, external or web-based training;
 - (c) preparing for and delivering training;
 - (d) researching and drafting a publication;
 - (e) supervising a Trainee Costs Lawyer undertaking the Costs Lawyer qualification;
 - (f) research and reading.
- 3.2 The following activities cannot count towards CPD:
 - (a) work, research or reading that is part of routine practice or casework;
 - (b) any work for which the client is charged (unless the Costs Lawyer is providing training or a seminar for that client);
 - (c) following social media or maintaining a social media account.
- 3.3 Each CPD activity should be at a level appropriate to the Costs Lawyer's professional development needs.

4. Waiver

The CLSB may waive all or part of these rules if it considers that exceptional circumstances have justifiably prevented a Costs Lawyer from meeting their CPD obligations during any CPD year.