

Consultation by the Costs Lawyer Standards Board

Part 1: Revised Training & CPD Rules in relation to Trainee Costs Lawyers

Part 2: Changes to continuing professional development (CPD) for Costs Lawyers

Part 3: New route to qualification as a Costs Lawyer

1. History

The Association of Law Costs Draftsmen (“ALCD”) was founded in 1977 with the object of promoting the status and interests of the profession of Law Costs Draftsmen (representation) and ensuring its membership maintained the highest professional standards (regulation).

Under the Legal Services Act 2007 (“Act”) the ALCD became an approved regulator of the profession of the Law Costs Draftsman. The Act required that the ALCD separate its representation and regulation functions and set onerous statutory obligations to ensure consumer protection:

- setting and overseeing education and training requirements to be met to qualify as a Costs Lawyer; and
- setting and overseeing the continuing professional development (“CPD”) requirements to be met by an authorised and regulated Costs Lawyer; and
- setting the professional standards for an authorised and regulated Costs Lawyer; and
- implementation of disciplinary measures.

Under a minute dated 12 September 2007, the ALCD agreed that Law Costs Draftsmen who were fellows of the ALCD and had undertaken a costs litigation/advocacy course, could adopt the title Costs Lawyer. The ALCD, through a subsidiary company, oversaw that course. The costs litigation/advocacy course was not subject to any examination.

The title of Costs Lawyer therefore came into being in 2007. The ALCD offered a window of opportunity from 2007 to 2011 for fellow status Law Costs Draftsmen to convert to Costs Lawyer status. With effect from 1 January 2012, fellow status of the ALCD no longer existed due to the ALCD becoming a voluntary membership representative body. Once that window of opportunity closed, the only means of achieving Costs Lawyer status was to undertake the Costs Lawyer Qualification (“CLQ”). The CLQ introduced by ALCD was a three year study programme, with an exam at the end of the three years. Evidence of three years of experience in costs law and practice was also required to achieve the CLQ.

On 1 January 2011, the ALCD changed its name to the Association of Costs Lawyers (“ACL”). On 31 October 2011, the ACL complied with the Act by delegating its approved regulator status to the Costs Lawyer Standards Board (“CLSB”). Since 31 October 2011, the ACL has

been purely a representative body for the Costs Lawyer profession and the CLSB has been the regulator of the profession.

Since the CLSB became the profession's approved regulator on 31 October 2011, regulated Costs Lawyer numbers have increased slowly. They are expected to reduce for practising year 2017 as entry to the qualification was suspended for study year 2013/14 whilst the qualification was revised:

As at 1 April 2012: 565

As at 1 April 2013: 563

As at 1 April 2014: 562

As at 1 April 2015: 598

As at 1 April 2016: 632

2. Barriers to entry

In respect of those who hold a legal qualification and practice in costs law, and Law Costs Draftsman the following factors are considered barriers to entry to the Costs Lawyer profession:

- Cost of the CLQ.
- The three year period of study.
- Restricted exemptions.

3. Purpose of this consultation

As stated above, part of the regulatory function of the CLSB is to set and maintain standards, to ensure consumer protection. To achieve this, the CLSB sets out standards to be achieved by those seeking to qualify as well as the standards required of a qualified Costs Lawyer authorised and regulated by the CLSB. The CLSB oversees the route to entry of the profession under the current Training & CPD Rules dated 1 January 2013 ("Current Rules").

The CLSB has identified a need to update the Current Rules in certain areas to reflect current practice. These changes have been addressed under parts 1 and 2 of this consultation. A new route to qualification is addressed under part 3 of this consultation.

4. How to respond to the consultation

This consultation opens on Wednesday 1 February 2017 and closes at midnight on Friday 21 April 2017 (a consultation period of eleven weeks and two days). It is acceptable to respond to only part of this consultation.

The CLSB will accept responses to this consultation in the following ways:

- By email: enquiries@clsb.info
- By post: CLSB, Centurion House, 129 Deansgate, Manchester, M3 3WR

PART 1: Proposed Revised Training & CPD Rules (“Revised Rules”)

A need has been identified to revise the format and content of the Current Rules to ensure they are clear, concise and fully comprehensive. Attached to this consultation paper are the Current Rules and proposed Revised Rules. The proposed changes are set out in the Revised Rules, in brief they are:

- 1.1 Rule 1.1 of the Current Rules states the CLQ is open to applicants over the age of 16. This has however presented the Accredited Study Provider (“ASP”) with difficulties in that vetting processes and related duties of care apply to those under the age of 18. The ASP has advised that in the last five years, they have not received an application from anyone under the age of 18. The CLSB therefore proposes to increase the minimum age of access to the CLQ from 16 to 18, and does not believe this would pose a realistic barrier to entry. The CLSB proposes that the applicant be 18 at the date study commences as opposed to the date of application to an ASP.
- 1.2 Rule 3.1 of the Current Rules makes it a requirement that a Trainee Costs Lawyer is a member of the ACL. As the ACL is a voluntary membership body for those who are a Costs Lawyer, this rule is considered unfair to a Trainee Costs Lawyer who should likewise be afforded the right to decide if they wish to be a member of the professions representative body. Accordingly, the CLSB proposes to remove this requirement.
- 1.3 Rule 8.1 of the Current Rules states *“exemptions may be considered by the ACL”* The CLSB proposes to clarify this rule to evidence that the CLSB has considered and approved a table of exemptions which will be applied by an ASP and that a table of CLSB approved exemptions will be accessible on the CLSB website.
- 1.4 Rule 8.1 of the Current Rules states exemptions will be granted to applicants who *“have successfully attained, within the previous seven years, the following qualifications:*
 - *A law degree.*
 - *Certificate of completion of the Law Society Legal Practice Course.*
 - *The Bar Vocational course.*
 - *ILEX qualification.”*CLSB no longer considers the need for the qualification to have been achieved within the last seven years as being relevant, and therefore proposes this be removed. Also, the Bar Vocational Course is now known as the Bar Professional Training Course (BPTC) and following ILEX having received chartered status, its qualification is C.ILEX. It is therefore proposed these changes be made to ensure references are current.

- 1.5 Rule 8.3 of the Current Rules states “*where exemptions are granted there will be no reductions in the fees payable for each module or the three year period of study ...*” The CLSB does not consider this Rule proportionate or fair. The CLSB therefore proposes a rule that would provide for an appropriate reduction in fees payable by a Trainee Costs Lawyer where exemptions apply e.g. when exemptions have been granted on 3 out of 6 modules, then a 50% reduction in fee shall apply.
- 1.6 There are references in the Current Rules to the ACL which originated from the CLSB inheriting, in 2011, ACL rules. It is proposed these references now be removed and replaced with a generic reference to an ASP. This would also provide for competition in the provision of the CLQ.
- 1.7 On reviewing the CLQ in 2013, yearly modules were changed to being yearly units. It is proposed this change be made to ensure references are current.
- 1.8 It is also proposed the Current Rules be revised to clarify that a Trainee Costs Lawyer is not required to undertake any CPD during their period of study and that CPD only applies after they have been issued with a practising certificate by the CLSB and that accountability for that CPD is to the CLSB and not an ASP.

Consultation question 1:

Do you agree with the proposed changes as set out in section 1?

- 1. Strongly agree**
- 2. Agree**
- 3. Neither agree nor disagree**
- 4. Disagree**
- 5. Strongly disagree**

Do you have any comments, for or against, on any of the proposed changes?

PART 2: CHANGES TO CPD

In 2013, a legal education and training review (“LETR”) was published. As a result, some regulators have implemented a less prescriptive approach to CPD. The CLSB is of the view there are pros and cons for each model, and has decided to retain the current 12 point prescriptive model for the profession until the impact of changes (such as automated bills of costs) has been evaluated in three years’ time.

A need has however been identified to review the Current Rules to provide clarity and flexibility on what is considered to be professional development and how a Costs Lawyer can achieve it. The proposed changes are as set out in the Revised Rules, in brief they are:

- 2.1 To add, following the LETR: *At the start of the CPD Year, a Costs Lawyer is required to reflect on their work and business practice and identify any gaps in skills and knowledge. They must then plan to fill those gaps by undertaking appropriate CPD. Costs Lawyers are encouraged to plan their annual CPD activities based on an objective assessment of their personal training and development needs in relation to their work and business practice. A Costs Lawyers should determine for themselves (bearing in mind their existing skills and the nature of their practice) the most appropriate subjects where they should undertake CPD, taking account of their responsibilities. When considering whether a type of training or activity could count towards CPD it is suggested a Costs Lawyer asks the question “what is the value of this training in providing legal services to my clients?”*
- 2.2 Provide greater clarity on table 1 as to the number of CPD points which can be claimed by attending an ACL conference.
- 2.3 Following changes to CPD by other legal regulators, providers can no longer say they are approved by those regulators for the purposes of providing CPD. This has caused confusion as to what training counts as CPD. A new rule is therefore proposed stating: *The CLSB will recognise CPD provided by a CLSB Accredited Costs Lawyer, CLSB Accredited Study Provider, Solicitor, Barrister, C.ILEX, ACL, other professional training provider.* This also offers clarity to an ASP that the CLSB considers them an appropriate body to offer CPD to Costs Lawyers.
- 2.4 Provide examples on how up to 50% of CPD achieved under table 2.
- 2.5 A rule has never appeared in the Current Rules relating to those who work only part of a CPD year due to maternity/long term sickness/reinstatement/qualification. A rule has therefore been introduced for clarity, stating that 1 CPD point must be achieved for each full month worked, with a minimum of 50% of the CPD year points being achieved under table 1.
- 2.6 Introduce a rule requiring Costs Lawyers to keep evidence of the CPD for two years from the end of the CPD year in question. This is not considered unreasonable, the Bar Standards Board requires a Barrister to retain theirs for six years.
- 2.7 Remove reference to *“Reading and completing ACL tutorial updates”* under table 2 as we are advised by ACL that these no longer exist.
- 2.8 Historically, 2 CPD points have been offered for those who read the Costs Lawyer Journal. It is proposed to change this reference to ACL membership, which provides not just the Costs Lawyer Journal (a valuable source of practising information) but a

wide range of other benefits which support professional development e.g. case law, practising updates, blogs.

Consultation question 2:

Do you agree with the proposed changes as set out in section 2?

- 1. Strongly agree**
- 2. Agree**
- 3. Neither agree nor disagree**
- 4. Disagree**
- 5. Strongly disagree**

Do you have any comments, for or against, on any of the proposed changes?

Consultation question 3:

Do you have any other suggestions on how CPD can be achieved under table 1 or 2?

PART 3: NEW ROUTE TO QUALIFICATION AS A COSTS LAWYER

At the present time there is only one route to qualifying as a Costs Lawyer, and this is via the CLQ. The CLQ was reviewed and revised following consultation by the CLSB in 2013 to ensure it covered a range of knowledge and skills necessary for a modern day Costs Lawyer in a fast changing environment. It continues to be a qualification to be completed over three years with a requirement for three years relevant experience in costs law and practice acquired during, before or after the period of study.

The ACL has long held the belief that there could be in the region of 4,000 unregulated Law Costs Draftsmen offering legal costs services to the public. Some have indicated they wished to achieve the CLQ. However, factors such as age, time and cost of the full course were factors against them taking that route. Unless those Law Costs Draftsmen work for an SRA regulated firm, they operate outside a regulatory structure, which exposes the consumer to risk.

The consumers of legal costs services are best served if all/a greater number of practitioners have demonstrated their competence to act, and are regulated. Further, the greater the number of regulated Costs Lawyer, the greater the ability to provide regulation at a reasonable price. To achieve this however, a new route to qualification would be required, which would be equivalent to the outcome of the CLQ.

The proposal

The CLSB seeks to remove some of the barriers to entry for those who have significant experience in costs law and practice and can evidence knowledge and skills to the expected

standard. The CLSB is therefore proposing to introduce a new test which would lead to qualification as a Costs Lawyer. The test would be open to anyone who can evidence that they have achieved 10 years of experience in costs law & practice. The introduction of a new test would acknowledge the experience and maturity these Solicitors, Barristers and Law Costs Draftsmen have in costs law and practice.

The new test would be equivalent in terms of demand to the CLQ and would provide a valid and reliable means of assessing a candidate. It would be an assessment of competence and for the purposes of this consultation it is being referred to as the Costs Lawyers Competence Test (“CLCT”).

The major difference between the proposed CLCT and the current CLQ is that the CLCT would be assessment only. There would be no requirement for candidates to undertake learning/study as part of the preparation for the CLCT. The CLCT would examine the compulsory syllabus of the CLQ, save for those modules which cover professional development planning.

The CLQ is divided into three units, each of which includes a number of compulsory modules. In unit three, there are a small number of optional modules. Each unit is assessed by yearly examination. These examinations, linked as they are to a course of study, are designed to test that candidates have met defined aims and outcomes.

Extracting the current approach from the CLQ is not an option. The assessments used within the CLQ are designed to test the outcomes achieved through learning and teaching. The CLCT would therefore be an entirely new form of assessment to cover the Costs Lawyer syllabus.

Part of an assessment’s validity is adequate coverage of what is supposed to be tested and there are different approaches to this. In this instance, it is proposed the CLCT would test the knowledge and understanding of the entire Costs Lawyers syllabus via multiple-choice testing. Well-designed multiple-choice questions (“MCQ”) can provide reliable and objective indicators of a candidate’s ability. For this reason, they are used increasingly in a range of high-stakes tests across a number of professions including:

- Medicine.
- Law (NY Bar Exam, the SRA’s Qualified Lawyers Transfer Scheme).
- Accountancy.

MCQs allow the test-setter to sample a candidate’s knowledge and understanding of a vast syllabus without requiring the candidate to undertake multiple assessments over a prolonged period. This is essentially what happens in all assessments. It is rarely possible to

test the whole of a syllabus in a single assessment and so test-setters sample the syllabus, focussing on different parts of the syllabus at different times.

Over recent years, there has been considerable work on designing robust MCQs which test candidate's higher abilities. Not just knowledge and understanding but also a candidate's abilities to evaluate and analyse. MCQs also have the considerable advantage of producing much more objectively justifiable results. The marking process avoids the variation which arises when a group of individuals each marks a number of scripts containing different essay choices.

It is reiterated, this method of entry would only be available to those with 10 years or more experience in costs law and practice. The CLQ would continue to operate for those who seek to enter the profession with little or no experience in costs law and practice.

The CLCT as proposed, would take less time than the CLQ, would cost much less and would therefore remove some of the barriers to entry to the profession that exist at the present time for those costs law practitioners who cannot afford the time or cost commitment required by the CLQ. In this way the CLSB anticipates that it will be possible for more practitioners from different backgrounds to enter the profession.

The Revised Rules have not been drafted to include this proposal. Should the proposal proceed, then Training & CPD Rules prevailing at the time will be amended to make reference to this additional route to entry.

Consultation question 4:

To what extent do you agree with our proposal for a Costs Lawyer Competent Test (CLCT)?

- 1. Strongly agree**
- 2. Agree**
- 3. Neither agree nor disagree**
- 4. Disagree**
- 5. Strongly disagree**

Do you have any comments on the proposed CLCT?

Consultation question 5:

To what extent do you agree with our proposed criteria that a minimum of 10 years of experience in costs law and practice to be proven before a candidate can apply to sit the CLCT?

- 1. Strongly agree**
- 2. Agree**
- 3. Neither agree nor disagree**

4. Disagree
5. Strongly disagree

Do you have any comments on the proposed 10 year experience criteria?

Consultation question 6:

To what extent do you agree that the CLCT is a multiple choice option?

1. Strongly agree
2. Agree
3. Neither agree nor disagree
4. Disagree
5. Strongly disagree

Do you have any other comments on the proposed multiple choice format of the CLCT?

Attachments

- Training & CPD Rules dated 1 January 2013 (Current Rules)
- Revised Training & CPD Rules (Revised Rules)

END