

**Costs Lawyer Standards Board response to the
Competitions & Markets Authority Legal Services Market Study Report**

Dated: 27 June 2017

A. The CLSB and the profession

1. The Costs Lawyer Standards Board (CLSB) acts as an approved regulator (AR) under the Legal Services Act 2007 by virtue of delegated authority by the Association of Costs Lawyers.
2. The CLSB is a small AR, regulating 622 Costs Lawyers at the time of this response.
3. A Costs Lawyer authorised and regulated by the CLSB is authorised to conduct the following reserved legal activity pursuant to the Legal Services Act 2007:
 - The exercise of a right of audience.
 - The conduct of litigation.
 - The administration of oaths.
4. The CLSB regulates only individuals (through an annual practising certificate), it does not regulate entities or license alternative business structures.
5. The CLSB confines itself to the regulation of the Costs Lawyer, a qualified individual who specialises in costs law and practice.
6. The CLSB considers the Costs Lawyer profession to be low risk for various reasons, the main being that Costs Lawyers authorised and regulated by the CLSB, who do not work for an SRA regulated firm of solicitors, are not permitted to handle client monies under Principle 3.6 of the Costs Lawyer Code of Conduct.

B. The CMA report

7. On 15 December 2016, the Competitions & Markets Authority (CMA) published a 518 page market study report on legal services (Report) under which it set out transparency expectations on the supply of legal services to individuals and small businesses.
8. An implementation group was formed which operates under published terms of reference. The group is made up of the ARs, the Legal Services Board (LSB) and the CMA. The group met on the 19 January 2017, 12 May 2017 and 21 June 2017.
9. The following timetable was set by the CMA:
30 June 2017: Each AR to publish their response (implementation plan).
30 September 2017: Each AR to commence public consultation on any amendments to their regulatory arrangements required to meet CMA expectations.

10. In the Report, the CMA recommended the LSB undertook an oversight role on the implementation of its recommendations. The LSB responded by identifying four high level outcomes to address recommendations in the Report, these are stated and addressed by the CLSB under section E of this response.
11. The Report acknowledged it is for each AR to consider and agree appropriate action. Paragraph 7.40 reads: *"It will be for individual regulators to assess their own current regulatory requirements and the relevance of our recommendations to the services that their regulated professions offer"*
12. The report acknowledged that a "one size fits all" approach to the recommendations was not appropriate. Paragraph 7.41 reads: *"In concluding on the need for enhanced standards, we are clear that 'one size does not fit all', in respect of the disclosures that are appropriate for individual legal services or different professions. We see these requirements applying particularly for the benefit of individual consumers, we believe that such requirements would assist small businesses and particularly microbusinesses if imposed more broadly."* Paragraph 7.47 reads: *"Given the number of pricing/charging models used in delivering different types of legal services, it is apparent that a prescriptive 'one size fits all' approach would not work in every instance and is neither a realistic nor desirable goal. Similarly, while in certain circumstances adopting a fixed-fee model might be appropriate from the perspective of both provider and consumer, this will clearly not always be the case."*
13. The Report also recommended the Ministry of Justice undertake reviews on the following, which the CLSB will assist with when initiated:
 - the current regulatory framework for legal services; and
 - the independence of regulators.

C. The scope of the recommendations

14. In February 2017, the CLSB undertook an evaluation of whether the Costs Lawyer profession fell within the scope of the CMA recommendations. Factors that led the CLSB to conclude a significant proportion was not applicable/not deliverable is set out under the following sections herein: 15 (who the CLSB regulates), 16 (proportionality) and 17 (the consumer of Costs Lawyer's services).
15. Who the CLSB regulates:
 - The CLSB only regulates individuals. Those individuals have limited or no ability to force their employer into complying with CMA expectations of an entity.
 - The CLSB does not regulate entities or licence alternative business structures, it has no power or authority to make an entity comply with CMA expectations.
16. Proportionality:
 - At the time of this response, the CLSB regulates 622 Costs Lawyers.

- Out of this 622, 12 Costs Lawyers work in-house e.g. bank, computer software company, insurance company and the CMA expectations do not apply to them.
- Out of the remaining 610 Costs Lawyers, 246 work for an SRA regulated entity. These Costs Lawyers will be captured by SRA arrangements.
- Out of the remaining 364 Costs Lawyers, 107 are sole practitioners.
- The remaining 257 Costs Lawyers work within a costs law firm, which vary in size, employees have limited or no ability to force an action on their employer.
- Regulated numbers are likely to decrease due to the following events:
 - (i) when automated Bills of Costs become mandatory (October 2017 at the Supreme Court Costs Office); and
 - (ii) in the event that the proposal of Lord Justice Jackson on an increased level of fixed costs is implemented.

17. Who is the consumer of a Costs Lawyer services:

An analysis of the profession has indicated that in excess of 92% of instructions to a Costs Lawyer are from an informed consumer i.e. from a Solicitor, not from an individual lay consumer or small business consumer (being the target of the Report).

D. CLSB approach

18. It is the intention of the CLSB to continue to work with other ARs to provide as consistent an approach as possible having regard to all the circumstances.

E. Implementation actions

19. This schedule sets out what the CLSB can realistically deliver based on that set out in sections 15, 16 and 17 above:

Action 1

To deliver a step change in standards of transparency to help consumers:

- (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider; and**
(ii) to compare providers.

CAVEAT: The CLSB does not regulate entities, Costs Lawyers are employees and have no ability to “force” their employer to comply.

PRICE & SERVICE

New action: The CLSB will issue a guidance note to those Costs Lawyers who do not work in-house or for an SRA regulated firm in respect of transparency on matters such as price, service, redress & regulatory status however (subject to caveat above).

Timeline: By 31 December 2017

Current action: The availability of information on price and service before contracting will continue to be covered by the CLSB under:

- (i) guidance issued by the CLSB on client care letters (available on the CLSB website); and
 (ii) a Costs Lawyers client care letter.

Current action: The CLSB will continue to require those Costs Lawyers not working in-house or for an SRA regulated entity to file their client care letters with the CLSB each year on applying for a practising certificate.

Current action: The CLSB will continue to highlight client care letter expectations to the profession e.g. article in Costs Lawyer Journal February 2017.

Current action: The CLSB will continue its supervision activities under its client survey by asking: *“Did the client care letter make you aware of:*

(i) The service you expected to receive from your Costs Lawyer?

(ii) The charging structure of your Costs Lawyer?”

REDRESS

Current action: The Costs Lawyer code of conduct, information on complaints procedures and outcomes on disciplinary matters will continue to be available on the CLSB website.

Current action: The CLSB will continue to monitor its guidance on Costs Lawyers complaints procedures to ensure it remains current.

Current action: The CLSB will continue its supervision activities under the client survey by asking the questions: *“Did the client care letter make you aware of:*

(i) Your Costs Lawyers complaints procedure?

(ii) Your right to refer an unresolved service complaint to the Legal Ombudsman?

(iii) Your right to refer an unresolved conduct complaint to the CLSB?”

Current action: The CLSB will continue to require that a Costs Lawyer not working in-house or for a firm regulated by the SRA, files evidence of current professional indemnity insurance with the CLSB on applying for an annual practising certificate.

REGULATORY STATUS

Current action: The CLSB will continue to operate its mark of regulation under strict licence terms.

Current action: The regulatory status of a Costs Lawyer will continue to be identified on the register of authorised and regulated Costs Lawyers, available for public inspection on the CLSB website, which also indicates:

(i) if a Costs Lawyer has any condition(s) attached to their practising certificate; and

(ii) whether the Costs Lawyer is licenced to use the CLSB mark of regulation.

COMPARE PROVIDERS

CAVEAT: The CLSB does not authorise entities to effect such a comparison.

Action 2

Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers

CAVEAT: The CLSB does not authorise entities to effect service quality information by firm.

Current action: The CLSB will continue its supervision activities of individual Costs Lawyers by monitoring feedback through the client survey. All Costs Lawyers are asked to provide this questionnaire to clients with their client care letter and again at the completion of an instruction. The survey can also be accessed on the CLSB website.

Current action: CLSB will continue to ensure its consumer/potential consumer engagement policy remains current.

Action 3

Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries

CAVEAT: CLSB does not regulate entities, Costs Lawyers are employees and have no ability to “force” their employer to comply.

New action: The SRA has taken the lead on a single sector wide digital register. CLSB will monitor the outcome of that work.

Timeline: By 31 December 2018

Done: A joint AR analysis of what information each AR publishes.

Current action: The CLSB already maintains two registers on its website, one in a format that enables third parties to lift that information.

Current action: Costs Lawyers have already been rated, those who are regulated by CLSB conform to published standards.

Action 4

Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them

New action: The CLSB will fund/contribute to funding consumer research projects where a need and cost/benefit is identified e.g. CLSB co-funded research conducted in 2016 on the suitability of client care letters.

Timeline: As need and cost/benefit identified.

New action: Under the Costs Lawyer section, the CLSB identifies and addresses unregulated practitioners (Costs Draftsmen). The CLSB will look to strengthen that information.

Timeline: By 31 December 2017

New action: The CLSB will provide the address and phone number of the employer of each Costs Lawyer on the public domain register on the CLSB website (this is currently only available on the ACL website) to enable better public access and search facility by location.

Timeline: By 31 December 2017

New action: The CLSB will consider what additional information can be provided on its section of the Legal Choices website to meet this requirement.

Timeline: By 31 December 2017

Done: The required link to Legal Choices website via the CLSB website is already in place on the CLSB home page.

Current action: The CLSB has been engaged in the creation and development of the Legal Choices website since its inception, and co-funds its existence. It will continue to play an active role in its continuation and development, also attending its editorial panel. It will work on its 3 year plan, assisting with implementation and funding where considered appropriate by the CLSB board.

Current action: Consumers will continue to have access to information on the following websites: ACL, CLSB, Legal Choices and Skills for Justice.

END