

BOARD DECISION NOTE
Costs Lawyer Standards Board
Date of Decision: 28 June 2023

Issue: Process documentation for assessing Qualifying Experience

Board constitution: Rt Hon David Heath CBE (Chair): Lay NED
Stephanie McIntosh (Vice-Chair): Lay NED
Paul McCarthy: Non-Lay NED
Andrew Harvey: Lay NED
Andrew McAulay: Non-Lay NED

1. Background information and summary of the issue

This Board Decision Note records the decision-making process in relation to the CLSB taking on responsibility for determining whether trainee Costs Lawyers have met the requirements for Qualifying Experience set out in the [Training Rules](#).

Changes to regulatory arrangements for Qualifying Experience

The CLSB carried out a review of its Training Rules in 2022. The Training Rules establish the requirements for qualifying as a Costs Lawyer. A period of Qualifying Experience has always been a requirement for qualification, although historically the training provider (ACL Training) was responsible for determining whether the criteria for Qualifying Experience had been met by individual qualifiers.

The CLSB [consulted on](#) changes to the Training Rules between 22 August and 17 October 2022 and published a report on the outcome of the consultation on 1 November 2022 (available [here](#)). Changes to Qualifying Experience are covered on pages 9 to 13 of that report and include a decision to shift responsibility for assessing Qualifying Experience to the CLSB; a decision supported by ACL Training.

Following approval from the Legal Services Board, the new Training Rules came into force in February 2022.

Development of a framework for assessing Qualifying Experience

As part of implementing the Training Rules, the executive developed a framework for assessing Qualifying Experience, comprised of process documents, guidance for students, and supporting materials. Documents of this kind would usually be considered by the board at a scheduled meeting. However, under the relevant transitional arrangements, students who met certain criteria would have the option of carrying out their Qualifying Experience under either the old Training Rules or the new Training Rules, and it was important to ensure that the CLSB's arrangements were communicated to students as early as possible so they could work toward the route that best met their needs.

The board therefore considered the following documents by email:

- Qualifying Experience Guidance Note
- Qualifying Experience web FAQs
- Template Qualifying Experience Record
- Template Qualified Person Statement

The board provided feedback and approved these documents by email in March 2023. That decision was recorded in the [minutes](#) of the board's meeting on 29 March 2023 (see item 7.1). At the meeting, the board confirmed its approval of the documents and agreed that no further amendments were necessary.

Subsequent issues for consideration

The executive continued to progress implementation during Q2 of 2023. At its meeting on 28 June 2023, the board received updates on the following workstreams:

- finalisation of online application forms;
- finalisation of the design for a conditional practising certificate;
- implementation of a communications plan;
- development of a supervisor register;
- processing of the first applications from students under the new framework.

This activity generated questions from several students about how the rules applied to their unique circumstances, and two such issues were considered by the board. First, the board discussed how the transitional arrangements applied to students whose Qualifying Experience supervisor did not meet the requirements in the new Training Rules. Second, the board considered the approach that should be taken where a trainee is not in a role/organisation where they have the opportunity to practise the skill of advocacy during their Qualifying Experience as required by the Training Rules (by reference to the [Costs Lawyer Competency Statement](#)).

2. Evidence considered by the Board

- Consultation outcome report on changes to the regulatory arrangements for the Costs Lawyer Qualification
- Feedback from students on the impact of the transitional arrangements on their individual circumstances
- ACL Training's reported experience of assessing Qualifying Experience
- Work experience frameworks used by other approved regulators

3. Recommendation(s) of the executive and/or Chair

The executive recommended the adoption of a new policy statement relating to supervision during the transitional period and additional guidance in relation to practising the skill of advocacy during Qualifying Experience.

4. Other factors considered by the Board

Standing items for consideration are the impact of the decision on:

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| - the CLSB's independence | - the CLSB's financial position |
| - furtherance of the regulatory objectives | - equality and diversity |
| - consumers, including vulnerable consumers | - data privacy |

- CLSB independence: A key driver of shifting responsibility for assessing Qualifying Experience from the training provider to the CLSB was to ensure independence of regulatory oversight in relation to competency at the point of qualification. Fair, consistent and robust assessment processes are essential to achieving this aim.
- Furtherance of the regulatory objectives / consumers: Ensuring a robust process for assessing Qualifying Experience is central to promoting the regulatory objectives of (i) encouraging an independent, strong, diverse and effective legal profession; (ii) protecting and promoting the interests of consumers; and (iii) promoting adherence to the professional principles.
- CLSB's financial position: This decision does not impact on the CLSB's financial position.
- Equality and diversity: Part of ensuring that the transitional arrangements for Qualifying Experience do not have an adverse impact upon any existing students relates to ensuring that students with protected characteristics or other diversity markers are not detrimented by the arrangements in a way that is different to other students.
- Data privacy: This decision does not impact on data privacy.

5. Risk assessment

The key risk in developing a new framework for assessing Qualifying Experience is that the changes may impact some students differently to others, causing unfair advantage or detriment to certain groups or individuals. There is also scope for miscommunication or inconsistency in how the rules are applied, due to the shift of responsibility from one body to another, and the fact that students will inevitably be communicating with both of those organisations about the changes.

These risks have been mitigated by working closely with the training provider to (i) agree the principles that will be applied in communicating with students and agree a communications plan; (ii) survey all existing students to identify potential issues with the transition and address those issues before they arise. Given the size of the existing cohort, ACL Training has been able to provide individualised support and assistance to students, in consultation with the CLSB, to ensure that no student is unfairly treated during the transition period.

6. Decision taken, including reasons for the decision (if not apparent from the above)

In relation to how the transitional arrangements apply to students whose supervisor does not meet the requirements in the new Training Rules, the board considered and approved

a policy statement (**Annex 1**) setting out how students in particular circumstances would be treated, to ensure fairness and consistency.

In relation to the approach that should be taken where a trainee does not have the opportunity to practise the skill of advocacy during their Qualifying Experience, the board considered and approved guidance – to be published on the CLSB website as part of the Qualifying Experience FAQs – emphasising the importance of practising advocacy during Qualifying Experience but providing practical suggestions for how that experience might be obtained.

The board acknowledged that during the transition period it was likely that other matters would come to light that needed to be addressed promptly to avoid any detriment being caused to students. The board therefore authorised the executive to take decisions on those matters – guided by the principles of clarity and consistency, pragmatism and practicality, and fairness to affected students – reporting to the board on an exceptions basis where appropriate.

7. Dissenting Board members (if any), including reasons for their dissent (if not apparent from the above)

N/A

8. Provision of the Legal Services Act 2007, or other legislation, under which the decision was made

Sections 28 and 51(4)(a) of the LSA.

Board Decision Note approved by the Board on: 28 June 2023

Annex 1

CLSB statement on the implementation of transitional arrangements for Qualifying Experience

April 2023

The CLSB has put transitional arrangements in place to ensure that trainee Costs Lawyers who started the Costs Lawyer Qualification (CLQ) prior to the introduction of the new Training Rules are not disadvantaged.

To ensure all students are treated fairly the following arrangements will apply:

1. Students who are in the final year of the CLQ and will complete the CLQ in 2023 (or shortly thereafter, for example through resitting an examination relating to modules undertaken in 2023) can choose whether to have their Qualifying Experience assessed under the new Training Rules or under the [old Training Rules](#) that applied until February 2023.
2. Students who are not in the final year of the CLQ in 2023 and are, therefore, due to complete the CLQ by the end of 2024 or later will have their Qualifying Experience assessed under the new Training Rules.
3. We are aware that there may be a small group of students who started the CLQ in or before January 2023 for whom the position set out in paragraph 2 could cause difficulties. For example, students may have a current supervisor who does not meet the requirements for a Qualified Person in the new Training Rules (that is, they are not a Costs Lawyer or other authorised and regulated lawyer). Previously, informal dispensation was given by ACL Training in these circumstances, but such arrangements will no longer be available under the new Training Rules.
4. In these cases the following arrangements will apply:
 - a. The student should make arrangements to have a supervisor who meets the Qualified Person requirements as soon as possible, and by the beginning of 2024 at the very latest. (This Qualified Person does not need to be the student's day to day line manager, but must supervise Qualifying Experience for the purpose of the Training Rules).
 - b. The student's current supervisor (who does not meet the Qualified Person requirements) should complete a Qualified Person Statement for the period during which they supervised

the student's Qualifying Experience, providing details of their experience in costs law. The new supervisor (who meets the Qualified Person requirements) should complete a separate Qualified Person Statement for the remainder of the Qualifying Experience period. Both statements should be submitted to the CLSB by the student with the other evidence required on completion of Qualifying Experience.

- c. Students with no eligible Qualified Person in their organisation can request a list of Costs Lawyers willing to act as a Qualified Person.