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# Consultation Practising Rules

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**13 February 2020**

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**Costs Lawyer Standards Board**

**CLSB**  
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# This consultation

The Costs Lawyer Standards Board (CLSB) regulates Costs Lawyers under the framework established by the Legal Services Act 2007 (LSA). Costs Lawyers must meet certain criteria before they can apply to the CLSB for authorisation to carry out reserved legal activities. Those criteria are set out in our Practising Rules. The Practising Rules also establish the processes by which a practising certificate – which evidences a Costs Lawyer’s right to practise under the LSA – will be issued. The [current version of our Practising Rules](#) can be found on the CLSB website.

Our existing Practising Rules were established in 2011 and were last amended in 2014. A review of the Rules was therefore warranted, in order to bring them up to date and ensure they are consistent with our other regulatory arrangements. There is no evidence to suggest that fundamental reform of the practising regime is needed. Rather, our review has focused on addressing specific issues with the current Rules that have been identified through our ongoing work.

As a result of the review, we propose to adopt new Practising Rules as set out in Annex 1. This consultation paper explains the main changes we are proposing. It raises questions that you might like to consider as part of your response, although we welcome comments on any aspect of the proposals. The consultation questions have been collated at Annex 2 for your reference. Consultation responses should be sent to [enquiries@clsb.info](mailto:enquiries@clsb.info) by **5pm on 29 March 2020**.

## The current practising regime

Costs Lawyers are permitted to practise if they:

- are qualified as a Costs Lawyer;
- have a current practising certificate;
- comply with CPD requirements; and
- have appropriate indemnity insurance.

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Practising certificates are issued annually on a fixed renewal date. Those qualifying or returning to practice in-year can apply for a certificate to cover the part of the year up to the next renewal date on payment of a reduced fee. Details of practising Costs Lawyers are entered on the CLSB register. A Costs Lawyer must have a current practising certificate to remain on the register.

The CLSB can refuse an application for a practising certificate, grant a practising certificate or grant subject to conditions on the certificate itself. These conditions might, for example, limit the type of work the Costs Lawyer can do or require them to take steps such as completing specified training. The CLSB can also impose a condition on a certificate during its currency.

A practising certificate will automatically be revoked on certain events (e.g. death) and may be revoked on others (e.g. bankruptcy). A Conduct Committee can also suspend or revoke a practising certificate and direct the removal (permanent or temporary) of a Costs Lawyer from the register.

## **Summary of key proposed changes**

### **Application for a practising certificate**

The current rules contain detailed requirements in relation to the application form for a practising certificate. This is not regulatory best practice and necessitates a change to the Rules each time the form is changed. In addition, the administrative elements of the application process, as currently described in the Rules, are not fit for purpose in a digital age.

We therefore propose to stipulate only that an applicant must send the form, fee and information as prescribed by the CLSB from time to time in order to apply for a practising certificate (see new Rule 2). This will allow us to adjust the application form and respond to feedback from Costs Lawyers and their employers as we move to a digital application process for the 2021 practising year.

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We have also included an obligation on applicants to inform the CLSB should they become aware of any inaccuracy or change to the information in the application.

***Consultation question 1: Do you agree that the administrative aspects of the practising certificate application process should be removed from the Rules themselves, to facilitate digitalisation and allow us to respond to feedback? If not, what level of detail should remain in the Rules?***

## Parental leave

The current Rules specify a reduced fee for a practising certificate application that is received part-way through the practising year. This applies to both newly qualified Costs Lawyers and Costs Lawyers who are returning to practice (known as applying for “reinstatement” to the register). We propose to remove this fee dispensation from the Rules and embed it instead in the application form and guidance, to give us the flexibility to accommodate different circumstances and ensure we can treat all applicants fairly. This is particularly relevant to applicants who have taken parental leave.

Currently, under the general rule described above, the fee dispensation for parental leave is based on the number of months that a Costs Lawyer practises during the practising year in which they return to work. This means that a Costs Lawyer who returns to work late in a practising year (say, November) will receive a larger fee dispensation than someone who returns to work earlier in the year (say, March) despite those Costs Lawyers being on parental leave for the same overall period of time. We recognise that this is an arbitrary distinction and wish to ensure equal treatment of (and support for) all Costs Lawyers returning to the profession following parental leave.

We have considered various options for addressing this issue, including the approaches taken by other legal services regulators. Our view is that a fee dispensation should not be offered on the basis of intended future parental leave (i.e. intended at the time of applying for a practising certificate), as plans may change, creating a different but equally undesirable risk of unfairness. We therefore propose to offer a fee dispensation in the practising year following the parental leave, covering the whole period of leave.

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The practising certificate application form will provide an opportunity to claim the dispensation and this will be explained in the practising guidance.

***Consultation question 2: Do you agree that all Costs Lawyers who return from parental leave should receive a dispensation from practising fees for the full period of their leave? We would be particularly interested to hear from anyone who will be impacted by this change.***

## Disclosures

The current Rules set out a list of matters and events that must be disclosed to the CLSB when applying for a practising certificate (e.g. certain convictions or insolvency events). However, the Rules then set out a different list of matters that must be disclosed during the lifetime of the certificate. In our view there is no continuing justification for having two distinct lists. New Rule 4 therefore establishes one list of events that need to be disclosed upon applying for a practising certificate or at any other time if the event occurs in-year.

As with the current Rules, there remains a residual requirement to report any other matters that could affect a Costs Lawyer's fitness to practice (Rule 4.2(i)). No list can be definitive in this context, so Rule 4.2(i) will account for unanticipated circumstances and allow us to specify (in guidance) additional matters that must be disclosed in response to emerging evidence.

The list of disclosures in the current Rules also needs updating to account for changes in legislation and prevailing best practice. Our view is that we need to widen our disclosure requirements, bringing our standards into line with other legal services regulators to ensure an equivalent level of protection for consumers (bearing in mind the specific activities carried out by Costs Lawyers). We have considered, in particular, the approach taken by the Solicitors Regulation Authority, Bar Standards Board and Council for Licensed Conveyancers in developing a new list of disclosable events.

Most notably, we propose to require disclosure of any disciplinary proceedings by a regulatory or professional body, rather than the limited disclosure in the current Rules

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of an order under section 43 of the Solicitors Act 1974. We have also included disclosure of an adverse finding of a civil court or tribunal. This could include, for example, findings of discriminatory employment practices or harassment of staff, which may constitute a breach of the Costs Lawyer Code of Conduct. We have not included a requirement to report breaches of the Code of Conduct itself, as this is already provided for at paragraph 5.2 of the Code.

***Consultation question 3: Is the proposed list of disclosable events in Rule 4 appropriate? Are there other events that should be disclosed as a matter of course?***

## Decisions

The current Rules give little steer as to the basis on which an application for a practising certificate will be refused or a condition imposed, beyond providing a discretion if one of the disclosable events occurs. We believe that providing a framework for decision-making will be more transparent and will assist both decision-makers and applicants.

We therefore propose to retain a discretion as to how to respond when notified of a disclosable event (recognising that most disclosures will not lead to an automatic revocation or refusal of a practising certificate but will require an individual decision), with a clearer decision-making framework set out in new Rule 3. We will also publish guidance on factors that the CLSB will take into account when making decisions relating to certain types of disclosures, focusing on areas where evidence from our regulatory work suggests that guidance would be most valuable.

***Consultation question 4: Do you agree that it is helpful to set out a decision-making framework in the Rules? Are you aware of any specific areas where further guidance would be valuable?***

## General improvements

At a general level, under the new Practising Rules we have aimed to simplify the provisions, make the Rules more accessible, adopt a more logical order and remove

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repetition and obsolete references. The changes will also bring the Practising Rules into line with ongoing reforms to our CPD Rules and Disciplinary Rules and Procedures.

Finally, we propose to abolish the existing Practising Certificate Reinstatement Procedure – which sets out the process for granting a practising certificate part way through the practising year – and address in-year applications within the new Rules themselves. This will make it easier for practitioners to find the material they need and will remove unnecessary duplication.

***Consultation question 5: Do you have any other suggestions for improving the Practising Rules as proposed in Annex 1?***

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# Annex 1

## Draft Practising Rules

### Introduction

These Rules were made pursuant to the Legal Services Act 2007. They govern the practice of Costs Lawyers and the issue and revocation of practising certificates by the Costs Lawyer Standards Board. They replace any other practising rules, regulations or bye-laws issued by the Costs Lawyer Standards Board.

### Interpretation of terms within these Rules

ACL	Association of Costs Lawyers (named in the LSA as the Association of Law Costs Draftsmen)
Applicant	Any person who applies for a Practising Certificate
Approved Regulator	A body designated as an approved regulator under the Legal Services Act 2007
CLSB	Costs Lawyer Standards Board
Costs Lawyer	A person who holds a current Practising Certificate and is therefore authorised to carry on the following reserved legal activities: <ul style="list-style-type: none"><li>• The exercise of a right of audience</li><li>• The conduct of litigation</li><li>• The administration of oaths</li></ul>
Conduct Committee	Committee established by the CLSB to consider Costs Lawyer conduct matters, as defined in the Disciplinary Rules and Procedures
CPD	Continuing Professional Development
CPD Rules	CLSB's rules and requirements for Continuing Professional Development that apply at the relevant date

Disciplinary Rules and Procedures	CLSB's rules and procedures governing disciplinary matters that apply at the relevant date
Practising Certificate	Certificate issued annually allowing a Costs Lawyer to practice under the title of Costs Lawyer and carry on reserved legal activities
Prescribed	Prescribed by the CLSB from time to time
Register	The register of Costs Lawyers who hold a current Practising Certificate
Regulatory Arrangements	The CLSB Handbook, including the Code of Conduct, and associated CLSB guidance, policies and procedures
Regulatory objectives	The objectives listed in s1(1) of the Legal Services Act 2007
Training Rules	CLSB's rules and requirements for training and qualification that apply at the relevant date

## RULE 1: Right to practise as a Costs Lawyer

1.1 No person shall be entitled to practise as a Costs Lawyer unless:

- (a) they have qualified as a Costs Lawyer in accordance with the Training Rules;
- (b) they have a current Practising Certificate which has been issued in accordance with these Rules and which is not suspended;
- (c) they comply with CPD requirements set out in the CPD Rules; and
- (d) they have professional indemnity insurance in accordance with Rule 9.

## RULE 2: Application for a Practising Certificate

2.1 An application for a Practising Certificate must be made in the prescribed form, correctly completed, by the prescribed time, and be accompanied by:

- (a) the prescribed fee; and
- (b) any information and documents that may be prescribed or reasonably requested by the CLSB.

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- 2.2 The application will only be made once the CLSB has received all of the payments, information and documents relating to it.
  - 2.3 The applicant must ensure that all details provided in and in connection with the application are correct and complete, and if they become aware of any changes to the information supplied or any inaccuracy or relevant omission, they must notify the CLSB as soon as practicable.

### **RULE 3: Decisions**

- 3.1 As soon as reasonably practicable after the receipt of a completed application for a Practising Certificate, the CLSB will notify the applicant of its decision.
- 3.2 The CLSB will either:
  - (a) grant a Practising Certificate (with or without conditions); or
  - (b) refuse the application.
- 3.3 The CLSB will refuse the application if the applicant:
  - (a) does not meet, or has not demonstrated that they meet, the criteria in Rule 1 (a), (c) and (d);
  - (b) has not complied with Rule 2;
  - (c) has failed to pay any fixed costs or financial penalties imposed pursuant to the Disciplinary Rules and Procedures which are due at the date of the application;
  - (d) is subject to an order suspending their Practising Certificate; or
  - (e) is subject to an order permanently revoking their Practising Certificate.
- 3.4 The CLSB may refuse the application or impose conditions on the issue of a Practising Certificate if satisfied that:
  - (a) the applicant is unsuitable to practice as a Costs Lawyer (or in the case of a condition, is unsuitable to undertake certain activities or engage in certain business or practising arrangements);
  - (b) the applicant is putting, or is likely to put, at risk the interests of clients, third parties or the public;

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- (c) the applicant will not comply with the CLSB's Regulatory Arrangements (and/or in the case of a condition, will require monitoring in relation to compliance with the CLSB's Regulatory Arrangements); or
  - (d) in the case of a condition, the applicant should take specified steps conducive to the Regulatory Objectives; or
  - (e) if it is otherwise in the public interest to do so in light of the Regulatory Objectives.

3.5 The CLSB may also impose or amend conditions on a Practising Certificate during its currency on one or more of the grounds set out in Rule 3.4. If the CLSB does so, it must give 21 calendar days' written notice with reasons to the Cost Lawyer in question, unless it is satisfied on reasonable grounds that it is not in the public interest to do so.

3.6 The CLSB may remove a condition on a Practising Certificate if it considers, on written application of the Costs Lawyer or on its own initiative, that there has been a change of circumstances such that it is no longer in the public interest for the condition to be maintained.

3.7 The CLSB must notify its reasons in writing to the applicant in the event the CLSB:

- (a) refuses an application;
- (b) makes a Practising Certificate subject to conditions; or
- (c) refuses to remove a condition imposed on a Practising Certificate.

## RULE 4: Disclosure

4.1 An applicant or Costs Lawyer must disclose the events set out in Rule 4.2 to the CLSB:

- (a) when making an application for a Practising Certificate;
- (b) when making an application to remove a condition on a Practising Certificate (including to remove a condition imposed under an interim suspension order pursuant to the Disciplinary Rules and Procedures); and
- (c) at any other time as soon as reasonably practicable after the event has occurred.

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- 4.2 The events that the applicant or Costs Lawyer must disclose are that they have:
- (a) been subject to any criminal charge, conviction or caution, subject to the Rehabilitation of Offenders Act 1974;
  - (b) been subject to an adjudication of bankruptcy;
  - (c) been granted a debt relief order;
  - (d) entered into an individual voluntary arrangement or a partnership voluntary arrangement;
  - (e) been a director of any company or partner in an LLP or partnership that has been the subject of a winding up order, an administrative order or an administrative receivership, or has otherwise been wound up or put into administration in circumstances of insolvency;
  - (f) been disqualified from being a company director or the trustee of a charity;
  - (g) been the subject of disciplinary proceedings by any regulatory or professional body;
  - (h) been the subject of an adverse order or finding of a civil court or employment tribunal; or
  - (i) become aware of any other matter that might reasonably be expected to be disclosed in affecting their fitness to become or remain a Costs Lawyer.
- 4.3 The applicant must make a prompt report to the CLSB of any material changes of which the applicant is aware to information previously provided to the CLSB by the applicant or on their behalf relating to the applicant or their practice, including any change to the information recorded in the register.

## RULE 5: Register of Costs Lawyers

- 5.1 The Register may be kept in electronic form.
- 5.2 The name of each Costs Lawyer will be entered onto the Register upon:
- (a) the issue of a Practising Certificate; or
  - (b) the expiry of any suspension of a current Practising Certificate.
- 5.3 The Register will contain the following information in respect of each Costs Lawyer:
- (a) name;
  - (b) registration number;

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- (c) date of qualification as a Costs Lawyer;
  - (d) details of their practice or employment;
  - (e) contact details, including an email address;
  - (f) any conditions on their Practising Certificate; and
  - (g) any other information required by law or deemed appropriate to be held.

- 5.4 A short version of the Register which shows the name and registration number of each Costs Lawyer, their date of qualification, the organisation in which they practice (if applicable) and any conditions on their Practising Certificate will be made available in an electronic format for public inspection through the CLSB website. Other information may appear in this public Register from time to time, unless the Costs Lawyer requests that it does not so appear. Disciplinary information relating to a Costs Lawyer may appear in the public Register in accordance with the Regulatory Arrangements.
- 5.5 If a Costs Lawyer is subject to an order (pursuant to the Disciplinary Rules and Procedures or otherwise) for suspension of their name from the Register, the Costs Lawyer's name will be removed from the Register for the period of the suspension. The Costs Lawyer's name will be reinstated to the Register upon expiry of the suspension if they have a Practising Certificate that is current at that time. If they do not have a Practising Certificate that is current at that time, their name will be reinstated to the Register upon successful application for a Practising Certificate.
- 5.6 If a Costs Lawyer is subject to an order (pursuant to the Disciplinary Rules and Procedures or otherwise) for permanent removal of their name from the Register, the Costs Lawyer's name will be removed from the Register and will be reinstated only upon successful appeal against the order.
- 5.7 A Costs Lawyer's name will be removed from the Register if they do not have a current Practising Certificate.

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## RULE 6: Issue of Practising Certificates

- 6.1 The Practising Certificate will be delivered to the address notified to CLSB as the applicant's practising address or to such other address as the applicant shall advise the CLSB in writing and may be delivered either by post or electronically.
- 6.2 The commencement date for the Practising Certificate will be the date on which it is entered on the Register and will also appear on the Practising Certificate.
- 6.3 The Practising Certificate will include the following details:
- (a) the full name of the Costs Lawyer;
  - (b) the commencement date;
  - (c) the date of expiry; and
  - (d) any condition to which the Practising Certificate is subject.
- 6.4 In the event conditions are imposed on a Practising Certificate, a replacement Practising Certificate will be issued stating the condition and the date on which it was imposed.
- 6.5 A replacement Practising Certificate will be issued in the event a condition expires, is varied, is successfully appealed or is revoked.

## RULE 7: Expiration of a Practising Certificate

- 7.1 A Practising Certificate will expire:
- (a) on the expiry date stated on the Practising Certificate;
  - (b) when a replacement Practising Certificate is issued; or
  - (c) on the death of the Costs Lawyer.

## RULE 8: Revocation and suspension of a Practising Certificate

- 8.1 A Practising Certificate may be revoked by the CLSB if:
- (a) the Costs Lawyer no longer meets the criteria in Rule 1(a), (c) and (d), or it comes to light that the Costs Lawyer did not meet those criteria at the time of applying for the Practising Certificate;

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- (b) the Costs Lawyer is subject to an order permanently revoking their Practising Certificate;
  - (c) the Costs Lawyer discloses one or more of the events set out in Rule 4.2 to the CLSB and the CLSB is satisfied of one or more of the matters in Rule 3.4 (a), (b), (c) or (e).

8.2 If a Costs Lawyer is subject to an order suspending their Practising Certificate, they will not be able to practise as a Costs Lawyer for the period of the suspension. If the Practising Certificate is still current when the suspension ends, the Practising Certificate will remain valid. If the Practising Certificate has expired during the period of the suspension, the Costs Lawyer must apply for a new Practising Certificate.

## RULE 9: Indemnity insurance

9.1 Costs Lawyers must ensure that they:

- (a) practice with the benefit of professional indemnity insurance of a minimum £100,000 (any one claim) to include loss of documents; and
- (b) on an ongoing basis, assess all financial risk associated with work being undertaken by them and ensure that professional indemnity insurance (including loss of documents insurance) is in place in excess of the minimum set out in Rule 9.1(a) at a level commensurate with that risk.

## RULE 10: Appeals

10.1 An applicant or Costs Lawyer may appeal a decision of the CLSB to:

- (a) refuse to issue a Practising Certificate;
- (b) impose conditions upon a Practising Certificate;
- (c) refuse to remove a condition imposed on a Practising Certificate; or
- (d) revoke a Practising Certificate.

10.2 An appeal must be made within 21 calendar days of the date on which the Costs Lawyer is notified of the decision they intend to appeal.

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- 10.3 The appeal must be in writing to the CLSB and must set out the grounds on which the appeal is being made.
- 10.4 The only grounds for making an appeal are that the decision was flawed because:
- (a) there was a material error of law;
  - (b) there was a failure to take into account material information;
  - (c) the decision was irrational or based on irrelevant considerations;
  - (d) there was a material failure to follow the Regulatory Arrangements;
  - (e) the decision was unlawful; or
  - (f) new evidence has been obtained which could not have been made available when the decision was made and which will be material to the decision.
- 10.5 An appeal shall be by way of review by a Conduct Committee and the decision on the appeal shall be made on the papers.
- 10.6 The Conduct Committee may not impose any decision or condition that is harsher than the original.
- 10.7 There is no right of appeal beyond the Conduct Committee.

## **RULE 11: Notification of decisions**

- 11.1 If it is considered to further the Regulatory Objectives, the CLSB may notify any or all of the following about decisions made under these Rules:
- (a) ACL;
  - (b) an Approved Regulator;
  - (c) the Legal Services Board;
  - (d) a law enforcement agency;
  - (e) the Legal Ombudsman.

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# Annex 2

## Summary of consultation questions

**Consultation question 1:** *Do you agree that the administrative aspects of the practising certificate application process should be removed from the Rules themselves, to facilitate digitalisation and allow us to respond to feedback? If not, what level of detail should remain in the Rules?*

**Consultation question 2:** *Do you agree that all Costs Lawyers who return from parental leave going forward should receive a dispensation from practising fees for the full period of their leave? We would be particularly interested to hear from anyone who will be impacted by this change.*

**Consultation question 3:** *Is the proposed list of disclosable events in Rule 4 appropriate? Are there other events that should be disclosed as a matter of course?*

**Consultation question 4:** *Do you agree that it is helpful to set out a decision-making framework in the Rules? Are you aware of any specific areas where further guidance would be valuable?*

**Consultation question 5:** *Do you have any other suggestions for improving the Practising Rules as proposed in Annex 1?*