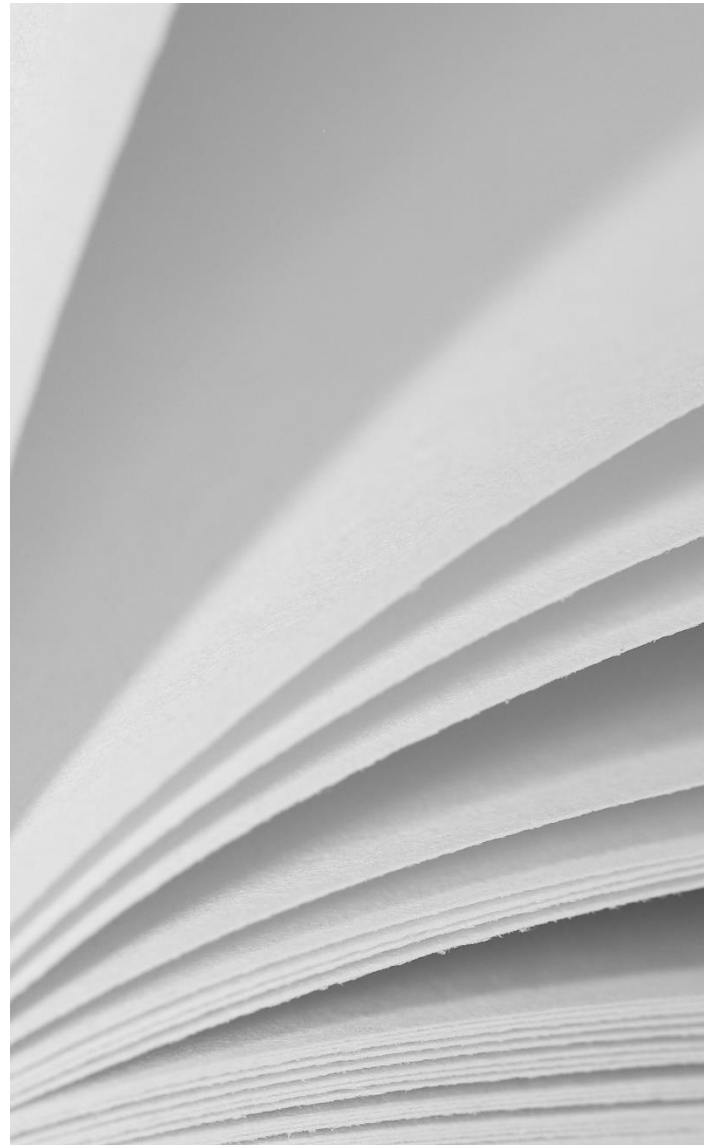

Consultation

Regulatory arrangements for
the Costs Lawyer Qualification



Closing date: 17 October 2022

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. Costs Lawyers must fulfil certain criteria before they can apply to the CLSB for authorisation to practise. One of those criteria, set out in Practising Rule 1.1(a), is that “they have qualified as a Costs Lawyer in accordance with the Training Rules”. This involves completing the Costs Lawyer Qualification.

Currently, the CLSB sets parameters for the Costs Lawyer Qualification – such as the syllabus and course structure – through [Training Rules](#) and supplementary [course documentation](#). The Qualification is then delivered to students by an Accredited Study Provider. There is currently only one such provider, ACL Training, which is an affiliate of the Association of Costs Lawyers (ACL). The study provider is responsible for designing its own course programme, developing learning materials, delivering the course to students, and determining appropriate assessment methods.

From a regulatory perspective, the purpose of the Costs Lawyer Qualification is to ensure that, by the time a Costs Lawyer is authorised to practise, they are competent to do the job; they conduct themselves in a professional manner and meet the expectations of their clients, the courts and the wider public. In February 2022, the CLSB adopted a new [Competency Statement](#) which sets out the level of competency (knowledge and skills) expected of Costs Lawyers at the point of qualification.

We now need to align our rules and regulations for the Costs Lawyer Qualification with the expectations in the Competency Statement. To do this, we have developed a new qualification framework that will ensure prospective Costs Lawyers receive high quality, relevant training and assessment, and will assure the CLSB that every graduate is ready to exercise the practising rights enjoyed by authorised Costs Lawyers. The qualification framework is set out in a new, single-source Scheme Handbook for Accredited Study Providers. The Scheme Handbook is the subject of this consultation.

This consultation paper highlights important aspects of the Scheme Handbook and raises questions you might like to consider as part of your consultation response. Consultation responses should be sent to enquiries@clsb.info by **5pm on 17 October 2022**.

Purpose and objectives

The overarching objective of our current work relating to the training and qualification of Costs Lawyers is:

For the CLSB's regulatory rules to allow for a Costs Lawyer Qualification that:

- (i) assures consistent high standards;*
- (ii) can be delivered flexibly, making it accessible to a diverse range of students;*
- (iii) is focused on the unique combination of knowledge, skills and attributes needed by Costs Lawyers, ensuring it is valid and relevant.*

The development of our new [Competency Statement](#) was a critical first step in achieving this objective. The Scheme Handbook brings the Competency Statement to life, by providing the practical framework within which study providers will become accredited to deliver the Costs Lawyer Qualification and assess whether students can demonstrate the relevant competencies to the required standard.

The Scheme Handbook contains information for study providers, to help them navigate the accreditation process and understand their obligations. As noted at paragraph 15 of the Scheme Handbook, it is intended to guide:

- prospective providers in the design and delivery of their programme, by outlining the accreditation process and specifying the CLSB requirements for accreditation;
- existing Accredited Study Providers in assuring quality, by clearly outlining the process for annual monitoring and interventions; and
- the CLSB Accreditation Panel in their accreditation and quality assurance decision making processes.

The primary audience for the Scheme Handbook is therefore study providers. However, the Handbook also contains regulatory rules about the Costs Lawyer Qualification that will impact students, newly qualified Costs Lawyers, their employers and supervisors. This consultation is therefore relevant to anyone with an interest in the regulatory requirements that govern qualification as a Costs Lawyer.

In developing the proposals outlined in this consultation, we have given consideration to the following:

- evidence gathered during our project to create the Competency Statement (as described in a [separate consultation](#) on the Competency Statement);
- the Legal Services Board’s [guidance for regulators on education and training](#);
- evidence of good practice from across the wider market, including by taking advice from expert consultants and advisors throughout the project;
- furthering the [regulatory objectives](#) set out in the Legal Services Act, most relevantly:
 - *encouraging an independent, strong, diverse and effective legal profession – by focusing on competency and quality, while promoting flexibility of course structure, such that the Costs Lawyer Qualification can be undertaken by a diverse range of students; and*
 - *promoting and maintaining adherence to the professional principles – by embedding a focus on ethical and professional conduct within competency, and ensuring that essential skills are taught and assessed.*

Structure of the Scheme Handbook

A copy of the proposed Scheme Handbook is available alongside this consultation [on our website](#).

The Scheme Handbook is made up of the main body text, which is broken down into 12 sections, plus eight annexes. The table on the following page summarises the purpose of each part of the Scheme Handbook and indicates whether it represents a change to our existing regulatory arrangements for the Costs Lawyer Qualification.

Part of the Scheme Handbook	Summary of purpose	Is it new?
Main body	This part establishes processes for the accreditation and ongoing monitoring of Accredited Study Providers. It sets out the CLSB’s policy on assessment, as well as exemptions from aspects of the Qualification. It explains how all of our regulatory rules relating to the Costs Lawyer Qualification fit together.	Partly. This is a new document, but parts of it are drawn from our existing approach, such as the exemptions in the current course documentation .
Annex 1: Competency Statement	This document describes the level of competency that a Costs Lawyer is expected to have at the point of qualification, when they are first eligible to apply for a practising certificate.	No. We consulted on this document previously and published a final version in February 2022.
Annex 2: Training Rules	The Training Rules give the Costs Lawyer Qualification regulatory status and set out other requirements for qualifying as a Costs Lawyer, such as undertaking prescribed work experience.	Yes. These will replace the existing Training Rules .
Annex 3: Accredited Study Provider Requirements	This document sets out the criteria for becoming an Accredited Study Provider. All study providers seeking accreditation or reaccreditation must meet this comprehensive set of outcome-based requirements and provide evidence to demonstrate how each of the requirements has been met.	Yes. The CLSB has not previously published criteria for accreditation.
Annex 4: Accreditation Agreement	This template contract will form the overarching agreement between the CLSB and an Accredited Study Provider for delivery of the Costs Lawyer Qualification, establishing important rights and obligations, including when accreditation can be withdrawn.	Partly. This is a new document, but parts of it are drawn from an existing Protocol agreed with ACL Training.
Annex 5: Annual monitoring and declaration form	This template document will be used on an annual basis to seek assurance that an Accredited Study Provider continues to meet the Accredited Study Provider Requirements and to identify any risks to the quality of its programme delivery.	Partly. This is a new document, but parts of it are drawn from the existing annual course report produced by Accredited Study Providers.

Annex 6: Assessment Outcomes	The Assessment Outcomes link the Accredited Study Provider’s assessments (and, in turn, its course design and delivery) to the knowledge and skills in the Competency Statement and define what must be assessed.	Yes. This represents a shift from prescribing course content via the course documentation to focusing on assessing competency.
Annex 7: Assessment Guidance	This document provides technical guidance as to how an Accredited Study Provider might approach assessment design.	Yes. It supports the new approach established by the Assessment Outcomes.
Annex 8: Logo Terms of Use	These establish the terms and conditions for using the Accredited Study Provider Logo.	Partly. This is a new document, but it mirrors the Terms of Use for the CLSB’s other logos.

The Scheme Handbook is intended to provide a one-stop-shop for everything that a study provider or other informed stakeholder may need to know about the regulatory aspects of the Costs Lawyer Qualification. Consequently, it is a long document that will not be suitable for all audiences. When we implement the Scheme Handbook, we intend to produce supporting materials for different audiences and publish these prominently on our website. For example, our webpage that explains [how to become a Costs Lawyer](#) will be redesigned to display the updated Training Rules and information about the new requirements and options for qualification.

Consultation question 1: Is the structure of the Scheme Handbook clear and accessible for its intended audience? If not, what changes should be made to the structure and why? Is there any content that should be added to, or removed from, the Scheme Handbook, and if so why?

Key proposed changes

In this section, we highlight three key changes that we propose to introduce through the Scheme Handbook. The purpose of highlighting these specific aspects is to help consultees identify policy proposals that are entirely new (that is, where the CLSB did not previously have a documented policy) or that represent a significant policy change. It is not intended to limit the scope of consultation responses, and we invite feedback on any aspect of the Handbook.

Introducing a framework for accreditation

The main change that will be brought about by the Scheme Handbook is the introduction of a comprehensive and transparent process for accrediting and reaccrediting study providers to deliver the Costs Lawyer Qualification.

Currently, the only Accredited Study Provider (ACL Training) is reaccredited to deliver its study programme to new and existing students on an annual basis. The reaccreditation process involves the preparation of a course report by ACL Training, setting out agreed data and information about the course, along with a viability report demonstrating that ACL Training (or its parent company ACL) has sufficient financial capability to offer the course in the following year. The CLSB audits the programme based on the information provided and communicates a reaccreditation decision (i.e. that reaccreditation is granted or refused) to ACL Training, along with recommendations for potential improvements to the course in future years.

This process has developed organically over time, through annual engagement between the CLSB and ACL Training. Certain aspects of the process were documented in a Protocol between the CLSB and ACL Training in 2019, which also contains provisions governing when and how the CLSB can intervene to protect students, and governing any withdrawal by ACL Training from delivery of the course.

There are clear risks, inefficiencies and gaps in the process described above. Below are some examples of difficulties caused by the existing approach:

- There are currently no transparent, objective and consistent criteria against which the CLSB can decide whether or not to accredit a study provider to deliver the Costs Lawyer Qualification. This leaves study providers open to potentially arbitrary or unjustified accreditation decisions.
- Recommendations for improvement that are made during the annual reaccreditation process are not linked to formal accreditation criteria, and there is no process for making reaccreditation conditional upon the study provider meeting recommendations within a given timeframe. Therefore, if recommendations are not taken forward, the CLSB must either reaccredit the

study provider despite a lack of progress, or refuse to reaccredit the study provider altogether, neither of which is likely to be in the interests of students.

- The annual reaccreditation process tends to look at the same aspects of the course year on year, with a focus on ensuring that the right policies and procedures are in place and that course statistics on key metrics (such as attainment, progression, diversity, complaints) do not reveal unmitigated risks. While these aspects of accreditation are important, they are not comprehensive. The process neglects some “bigger picture” elements – for example, around governance, management and programme structure – which do not need to be revisited annually but are nonetheless critical to effective delivery.
- The CLSB relies solely on information provided by the study provider in making its reaccreditation decision. There is no mechanism for visits (to the online learning environment) to verify or test information in the course report at any point.
- The process is specific to the CLSB and ACL Training, rather than study providers generally. If another provider was to apply for accreditation, neither that provider nor ACL Training would have sufficient assurance that all providers would be treated equally and subject to a consistently robust accreditation process.
- It is not clear what rights and remedies the CLSB and ACL Training would each have if the other did not follow the accreditation process, or which kind of failures would trigger those rights and remedies.

The Scheme Handbook aims to address these and other logistical issues by establishing transparent, consistent processes and criteria for accreditation and reaccreditation.

The proposed processes are described in sections 1 to 8 of the main body of the Scheme Handbook. They involve a comprehensive validation event every four years, led by a newly created CLSB Accreditation Panel, with annual monitoring in the intervening years. The processes allow for conditional accreditation, site visits, a clear intervention framework and reporting requirements. The expectations of the Accredited Study Provider and the CLSB are formalised in an Accreditation Agreement (see Annex 4 of the Scheme Handbook), the terms of which will apply consistently to all study providers.

New criteria for accreditation are set out in the Accredited Study Provider Requirements (see Annex 3 to the Handbook). These cover a wide range of requirements, in areas such as governance, risk, evaluation, programme design and student experience, all aimed at ensuring an Accredited Study Provider has the capacity and capability to deliver high quality training and assessment to students enrolled in the Costs Lawyer Qualification.

In order to be accredited or reaccredited to deliver the Costs Lawyer Qualification, a study provider must submit evidence to show that it meets each of the Accredited Study Provider Requirements. Examples of evidence that could be used for this purpose are set out in Annex 3 to the Handbook. A template annual monitoring form, which includes a declaration of compliance with the Accredited Study Provider Requirements, is at Annex 5 to the Handbook.

Consultation question 2: Do you agree that there should be documented processes and criteria for accrediting study providers to deliver the Costs Lawyer Qualification? Are the proposed processes and criteria in the Scheme Handbook (including in Annexes 3, 4 and 5) appropriate? If not, what should we change and why?

Shift in focus from a syllabus to assessment outcomes

The second key change that we propose to introduce through the Scheme Handbook is to shift the CLSB's regulatory focus away from prescribing course content for the Costs Lawyer Qualification toward seeking assurance of qualifiers' competency.

The Legal Services Board's (LSB's) [guidance for regulators on education and training](#) establishes five education outcomes that regulators must meet through their regulatory arrangements. Relevantly, regulators should ensure that *“providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the [learning/assessment] outcomes required”*, and this can be achieved where *“approval of education and training routes is dependent on providers' ability to demonstrate how their approach enables candidates to achieve the required [learning/assessment] outcomes”*. In other words, regulators should establish outcomes for students, and study providers should design courses that demonstrably deliver those outcomes.

We are not satisfied that our current approach is consistent with this guidance. The CLSB's [course documentation](#) currently mandates a full syllabus for the Costs Lawyer Qualification, specifying minimum content requirements that Accredited Study Providers must deliver across 20 modules grouped into three units. The description of each module includes its aim and stated learning outcome(s) in addition to the required content. Alongside the syllabus, the course documentation prescribes a mandatory structure for the course, credit values, assessment type, pass marks and grading.

As a regulator, we are concerned with whether lawyers are competent to perform the reserved legal activities that they will be authorised to carry out upon qualification. In the context of newly qualifying Costs Lawyers, this means we need to know whether a student is competent, to the prescribed minimum standard, across all the knowledge and skill areas identified in the [Competency Statement](#). In this way, the purpose of the Costs Lawyer Qualification is to ready a student for practising as a Costs Lawyer and, through assessment, satisfy the CLSB that the student has demonstrated the requisite level of competency.

To better align our regulatory arrangements for the Costs Lawyer Qualification with this purpose, we have developed a set of Assessment Outcomes which are linked to the knowledge and skills in the Competency Statement. These appear at Annex 6 of the Scheme Handbook. Accredited Study Providers will need to design assessments for the Costs Lawyer Qualification that test the Assessment Outcomes. As a result, students who pass the assessments and complete the Costs Lawyer Qualification will have demonstrated that they meet the standards in the Competency Statement and are ready for authorisation. We believe that this approach is in line with the LSB's guidance and also with the Better Regulation Framework, by ensuring that the regulatory requirements for the Costs Lawyer Qualification are proportionate and targeted to their purpose.

As a consequence of focusing on Assessment Outcomes, we propose to no longer prescribe any of the following features of the Costs Lawyer Qualification: the study time period (currently three years); the module or unit structure; a syllabus or learning outcomes; credit values. We do propose to give indicative guidance on some of these aspects to drive consistency and manage student expectations (see section 9 of the

Handbook, as well as the Assessment Guidance at Annex 7), but our view is that anything more prescriptive is unjustified. Our aim is to achieve assurance of competency for the CLSB, and flexibility of delivery for Accredited Training Providers and their students, at the same time.

Consultation question 3: Do you agree that the CLSB should shift its focus away from prescribing a syllabus for the Costs Lawyer Qualification toward seeking assurance of students' competency through the development of Assessment Outcomes? Is there anything that should be added to or removed from the proposed Assessment Outcomes or Assessment Guidance (Annexes 6 and 7 of the Handbook), and if so why?

Changes to the work experience requirements

Rule 6.2 of the existing [Training Rules](#) provides:

To successfully complete the Costs Lawyer Qualification a Trainee Costs Lawyer will be required to evidence to the [Accredited Study Provider] that they have also achieved three years' work experience in costs law and practice (Qualifying Experience). The three years' Qualifying Experience need not be continuous.

The [course documentation](#) supplements this by providing (at paragraph 7):

The aim of [Qualifying Experience] is to ensure a Trainee reaches an expected level of competency and performance. During [Qualifying Experience] a Trainee will:

- *Apply knowledge acquired by them under the Course.*
- *Learn and apply key practical skills of a Costs Lawyer.*
- *Learn and apply the professional standard of a Costs Lawyer.*

We are doubtful that the existing Qualifying Experience requirements achieve their stated aim. Currently, Qualifying Experience may be undertaken by students before, during or after they commence study toward the Costs Lawyer Qualification. If the purpose of Qualifying Experience is to apply knowledge that a student develops through the Costs Lawyer Qualification, it is difficult to see how experience gained prior to starting the training course could fulfil this purpose.

We are also doubtful that Qualifying Experience is an appropriate forum to “learn” requisite skills and professional standards of conduct. Under our proposals, all the competencies in the Competency Statement – covering both knowledge and skills – will be developed and assessed through the Costs Lawyer Qualification. This places responsibility on the Accredited Study Provider to assure the CLSB that competency has been attained consistently by each student, rather than this responsibility falling to individual supervisors in a workplace context.

Within our new regulatory framework for qualification, the purpose of Qualifying Experience can be better articulated as follows (see Rule 5.2 of the proposed new Training Rules):

The purpose of Qualifying Experience is to ensure that all qualifying Costs Lawyers have the support, mentorship and oversight needed to meet the standards in the Competency Statement in a day-to-day working environment.

With that purpose in mind, we do not feel it is justifiable to prevent an individual from practising as a Costs Lawyer before they complete the requisite period of Qualifying Experience, so long as they are practising with the support, mentorship and oversight that Qualifying Experience is intended to deliver.

In terms of the duration of Qualifying Experience, the market has moved on considerably since the three-year period in the current Training Rules was established. That period now appears excessive when compared to the approach taken in other parts of the legal profession, given the shorter periods required for qualifying solicitors, barristers, licensed conveyancers, notaries and CILEx lawyers (we note that, at the time of writing, CILEx Regulation was consulting on whether to change its required period to an aggregate of 2,300 hours, which would be approximately 1.25 years of full time work).

Given the above, we propose to make the following changes to the requirements for Qualifying Experience (as reflected in Rule 5 of the proposed new Training Rules):

- exclude work experience that is obtained prior to starting the Costs Lawyer Qualification from the scope of Qualifying Experience;

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- reduce the period of Qualifying Experience from three years to two years, to better align with other parts of the legal services sector;
 - allow individuals to complete their Qualifying Experience after qualifying as a Costs Lawyer if they wish to do so, in which case they will be issued with a conditional practising certificate until the period of Qualifying Experience has been completed;
 - to facilitate this, move responsibility for verifying an individual's Qualifying Experience from the Accredited Study Provider to the CLSB.

Consultation question 4: Do you agree with the proposed changes to the Qualifying Experience requirements in Rule 5 of the Training Rules? If not, what should we do differently and why?

Implementation

Following this consultation, we will publish a consultation outcome report on our website. Depending on the outcome, we will then make an application to the Legal Services Board to approve the resulting changes to our rules.

If those changes are approved, we intend to implement them with immediate effect to enable Accredited Study Providers to apply for accreditation under the new framework as soon as possible. Supporting materials for prospective students and other interested parties will be published on our website at the same time.

We are very mindful of the potential impact of the proposed changes on the existing Accredited Study Provider, ACL Training, and its students. Fortunately, the timing of our work in this area has aligned with ACL Training's own ambitions to refresh its course offering, providing a unique opportunity to update both the regulatory and substantive aspects of the Costs Lawyer Qualification at the same time. We are working closely with ACL Training to agree transitional arrangements for a new course that meets the requirements in the Scheme Handbook, with a focus on safeguarding the interests of existing students. We are grateful to ACT Training's executive and board for their ongoing collaboration and support in this work.

Upon implementation of the Scheme Handbook, we would also revoke:

- the existing [Training Rules](#) (which would be replaced by the new Training Rules at Annex 2 of the Scheme Handbook);
- the [course documentation](#);
- the delivery Protocol agreed in 2019 between the CLSB and ACL Training.

Impact of the proposals

Impact on equality

We do not foresee our proposals having any adverse impact on groups with a protected characteristic under the Equality Act 2010. As explained earlier in this document, a key objective of this work is for our regulatory rules to allow for a Costs Lawyer Qualification that can be delivered flexibly, making it accessible to a diverse range of students. Under the proposed Scheme Handbook, the CLSB will be less prescriptive as to the structure and content of the Costs Lawyer Qualification going forward, focusing instead on assessing the competencies that students must demonstrate at the point of qualification. This will give study providers greater flexibility to design and deliver their course programmes so as to meet the needs of a wider range of learners. In this way, we believe that our proposals will have a positive impact on equality of access to the Costs Lawyer Qualification, and thus the profession.

We would welcome any observations or feedback on equality impacts (positive or negative) arising from the changes that we propose to introduce through the Scheme Handbook.

Impact on regulated persons, consumers and the public interest

The proposals will not directly impact regulated Costs Lawyers, however Costs Lawyers may be impacted indirectly as employers and supervisors of newly qualifying practitioners, and as stakeholders in the profession's reputation and future. The proposals will directly impact trainee Costs Lawyers and prospective future Costs Lawyers by establishing the assessment outcomes that they must meet in order to

complete the Costs Lawyer Qualification and by amending the requirements for Qualifying Experience.

We consider the impact on these groups to be positive, by:

- enhancing the validity, relevance, consistency and quality of training and assessment undertaken for the Costs Lawyer Qualification;
- promoting fairness, by assessing all new qualifiers against a consistent, objective standard;
- clarifying the purpose of Qualifying Experience and removing burdensome barriers that are not necessary or appropriate for achieving that purpose;
- making it easier for study providers to adapt their course programmes to meet the needs of students now and into the future.

Expectations of current students will be managed through transitional arrangements agreed with ACL Training, including by offering all current students the option to complete the Costs Lawyer Qualification under the existing structure within a reasonable timeframe.

In terms of consumers and the public, our proposals are designed to ensure that Costs Lawyers possess the right skills and knowledge to safely advise all clients at a minimum level of competency, now and into the future. A report from our recent project, which asked [how Costs Lawyers could help to reduce the cost of legal services](#), demonstrated the manifold potential benefits of developing a strong Costs Lawyer profession for promoting access to justice and the public interest more broadly. Specifically, this project is designed to promote the consumer outcomes of quality, access, fairness and diversity under our [commitment to promoting good consumer outcomes](#).

We would welcome comments from consultation respondents on likely impacts (positive or negative) of the new framework in the Scheme Handbook on regulated persons, consumers or the public.

Summary of consultation questions

The questions posed in this consultation are collated below for reference:

Consultation question 1: *Is the structure of the Scheme Handbook clear and accessible for its intended audience? If not, what changes should be made to the structure and why? Is there any content that should be added to, or removed from, the Scheme Handbook, and if so why?*

Consultation question 2: *Do you agree that there should be documented processes and criteria for accrediting study providers to deliver the Costs Lawyer Qualification? Are the proposed processes and criteria in the Scheme Handbook (including in Annexes 3, 4 and 5) appropriate? If not, what should we change and why?*

Consultation question 3: *Do you agree that the CLSB should shift its focus away from prescribing a syllabus for the Costs Lawyer Qualification toward seeking assurance of students' competency through the development of Assessment Outcomes? Is there anything that should be added to or removed from the proposed Assessment Outcomes or Assessment Guidance (Annexes 6 and 7 of the Handbook), and if so why?*

Consultation question 4: *Do you agree with the proposed changes to the Qualifying Experience requirements in Rule 5 of the Training Rules? If not, what should we do differently and why?*

We welcome feedback on any aspect of the consultation, whether or not it relates to a specific question.

The consultation closes at **5pm on 17 October 2022** and responses should be sent to enquiries@clsb.info. We will publish a report on the outcome of the consultation on our website after the consultation closes. If you would like any part of your response to be anonymised or kept confidential, please let us know when you submit it.

The proposed Scheme Handbook is available alongside this consultation [on our website](#).