
Consultation outcome

Costs Lawyer Competency Statement



2 February 2022

Costs Lawyer Standards Board

CLSB

The logo for the Costs Lawyer Standards Board (CLSB) consists of the acronym "CLSB" in a bold, white, sans-serif font. Below the text is a graphic element consisting of seven vertical bars of varying widths, creating a barcode-like pattern.

Overview

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 without supervision. One of those criteria is that they have completed the Costs Lawyer Qualification.

The CLSB sets parameters for the Costs Lawyer Qualification – such as entry requirements and course structure – through the [Training Rules](#) and supplementary [course documentation](#). The Qualification is then delivered to students by an Accredited Study Provider. Currently, the only such provider is ACL Training, an affiliate of the Association of Costs Lawyers (ACL). The training provider is responsible for developing a detailed syllabus, creating training materials, delivering the course to students and determining appropriate assessment methods.

In order to facilitate a clear, shared understanding of the level of competency expected of Costs Lawyers at the point they qualify into the profession, we undertook a comprehensive programme of research and engagement to develop a new Competency Statement for qualifying Costs Lawyers. We issued a [consultation on the proposed Competency Statement](#), which closed on 18 October 2021.

We received responses to the consultation from: ACL Training; ACL; the Legal Services Consumer Panel (LSCP); the Solicitors Regulation Authority (SRA); Nottingham Law School (NLS); LawCare; and an individual Costs Lawyer. We note that the views of many individual practitioners had already been incorporated at earlier stages of the project through one-to-one interviews and focus groups. Our methodology is summarised at pages 5 to 6 of the consultation document. All responses were constructive and helpful, and we would like to thank respondents for taking the time to engage with this work.

In light of the consultation responses, we intend to implement the Competency Statement, subject to amendments described in this consultation outcome report. Implementation will take place as part of a wider package of reforms to our regulatory arrangements for the Costs Lawyer Qualification, which will be subject to further consultation and prior approval of the Legal Services Board during 2022.

Responses to consultation questions

General feedback

Five respondents strongly endorsed the introduction of a Competency Statement by the CLSB, and no respondents disagreed with the proposal to introduce a Competency Statement. ACL noted a common thread in its responses to the specific consultation questions, namely that the Competency Statement will only be effective if it accurately reflects the changing needs of the profession and its clients, and thus requires ongoing review to ensure its continued relevance and fitness for purpose.

The LSCP noted its expectation that some consumers would find the Competency Statement very helpful in understanding what they can expect from a practising Costs Lawyer. While the LSCP acknowledged the variety of sources consulted in the CLSB's research, it also noted the importance of engaging with the consumers of Costs Lawyers' services to obtain a clear picture of what consumers want from the Costs Lawyers they have engaged, ensuring the consumer perspective is incorporated into the Statement.

The SRA confirmed that the proposal to introduce the Competency Statement aligned with its own regulatory approach. The SRA commented on the benefits it has realised through its 2016 Statement of Solicitor Competence, including that it provided a reference point for reflecting on ongoing competence and underpins the Solicitors Qualifying Examination, helping to make sure it is rigorous, consistent and relevant to modern legal practice. This aligns with the CLSB's objectives in developing its Competency Statement and we are grateful to the SRA for sharing learnings from its own work throughout this project.

CLSB response

We agree with ACL's observation about the need to keep the Competency Statement current over time. We had this objective in mind when developing our project methodology, particularly through the first Subject Matter Expert strategic review which aimed to identify future market developments, technological advances and consequent job specification changes over time. In light of ACL's observation, we will also develop a

review programme for the Competency Statement covering, initially, the first five years following implementation.

In relation to the LSCP's recommendation to directly investigate consumer expectations, we endeavoured to identify a group of individual (lay) consumers who we could test the Competency Statement with, but given the relatively small numbers of such clients in the market we could not generate a sufficient sample. We are separately undertaking research to better understand consumer outcomes in the context of our [consumer engagement strategy](#), and we will ensure that findings from that research are reflected in the review programme mentioned above. We are mindful of the need to ensure the Competency Statement both reflects and informs consumer expectations and welcome the LSCP's continued interest in the project.

Finally, we are conscious of the need to avoid direct inconsistency with the SRA's regulatory approach, given that around half of the regulated community of Costs Lawyers practises in organisations that are authorised by the SRA. We therefore welcome the SRA's confirmation that the approach taken in the Competency Statement is well-aligned with its own.

Consultation question 1: Is it clear from pages 3 to 5 of the Competency Statement how the document should be used and how the elements fit together? If not, what other information would be helpful?

All respondents agreed that it was clear how the elements of the Competency Statement fit together and how the document should be used, and a number of respondents commented on aspects they found particularly useful. Several respondents made suggestions for how aspects could be further improved, as follows:

- ACL Training suggested adding an explanation of the relationship between the Competency Statement and (future) educational standards and assessment of students, as well as more detail around the requirement that the Competency Statement be read in conjunction with the Costs Lawyer Handbook.

- The LSCP suggested signposting to mechanisms for raising concerns that a particular Costs Lawyer is not operating at the minimum standard, and also clarifying (in the text on page 3 of the Competency Statement) the relationship between the minimum standard and other elements.
- ACL suggested the status of professional attributes may be more effectively presented as “umbrella” attributes rather than elements that only come about after reaching the Minimum Standard.
- NLS suggested referring to employers as potential users of the document as well as clarifying what happens if the minimum standard is not met following qualification. NLS also made some further suggestions in relation to how the Competency Statement informs amendments to the CLSB’s regulatory arrangements for the Costs Lawyer Qualification. These were helpful and will be taken into account in the next stages of our work, although did not necessitate changes to the Statement itself.

CLSB response

We have amended the Competency Statement to take into account the feedback above. However, we have not actioned two of the suggestions for the following reasons:

- We have not at this stage added an explanation of the relationship between the Competency Statement and (future) education and assessment standards. We see the merit in this suggestion, however new education standards will be developed during 2022 using the Competency Statement as their foundation. We do not feel it would be helpful to cross-refer to the existing course documentation at this stage, as it is not yet in line with the Competency Statement and may cause confusion. We will consider in due course whether it would also be useful to update the Competency Statement with cross-references to the new education standards, once implemented.
- We agree that the attributes could be described as “umbrella” competencies that do not come about only after a Costs Lawyer reaches the Minimum Standard. We

feel this is already well described throughout the document, particularly through references to the attributes being developed during training and beyond (i.e. before and after attainment of the Minimum Standard). While this element appears last in the diagram on page 4 of the Competency Statement, this is intended to show (as stated) that it supports all the other elements in the framework.

Consultation question 2: Does the Competency Statement reflect the knowledge you would expect a newly qualified Costs Lawyer to have? If not, which areas should be added or excluded, and why?

Four respondents answered this question. The individual Costs Lawyer agreed that the Competency Statement reflected the knowledge expected of a newly qualified practitioner. NLS noted that the detail of the knowledge elements would be important in achieving the diversity aim of the project, in terms of making the route to entry more flexible and accessible. Otherwise, NLS felt that it did not have sufficient insight into Costs Lawyers' work to provide in-depth feedback on the knowledge competencies.

The most detailed responses to this question were received from ACL and ACL Training, each of which provided helpful insights based on their perspectives and experience. ACL confirmed that it was satisfied that the knowledge areas set out in the Competency Statement were broadly accurate. It suggested that the detailed table on pages 8 and 9 of the consultation document be included in the Competency Statement itself, to enable readers to understand what knowledge categories such as "other litigation" encompass.

ACL also noted that, whilst a student could be working in a particular environment during their supervised practice, they might move into another environment where they are faced with different work types, such as legal aid or probate. ACL felt that it was important that the knowledge categories were flexible enough to reflect those circumstances.

Finally, ACL noted that the changing professional environment for Costs Lawyers is leading to a greater emphasis on advocacy at varying levels. ACL expressed its hope that

these changing trends would be monitored and incorporated into the knowledge areas as necessary.

ACL Training agreed that all nine of the identified knowledge areas should be included in the Competency Statement, but felt that some important knowledge areas might not be captured under the headings used. These included Court of Protection work and proceedings in special forums that do not involve specialist areas of law (such as the Supreme Court or arbitral tribunals).

ACL Training also felt that some knowledge areas, such as contract law, were too broad and did not sufficiently draw out on their face the specialist knowledge that differentiates Costs Lawyers from other more generalist regulated legal practitioners. ACL Training believed this could cause difficulties for practitioners wishing to cross-qualify from other professions or for lay readers of the Competency Statement who might not readily be able to discern how Costs Lawyers are distinguishable from other lawyers.

To address these issues, ACL Training suggested reorganising the knowledge categories, by retaining five of the knowledge areas (civil litigation, legal aid, contract, tort, and professional standards and ethics) and substituting the remaining areas for four new areas, namely: costs pleadings and process; quantification and assessment of costs; costs in special courts; the lawyer-client relationship and funding agreements. ACL Training set out what it felt might be included in these alternative knowledge areas and its reasoning as to why they were preferable.

ACL Training drew on existing student data to provide evidence in support of its submissions. In particular, it provided helpful statistics on the specialist areas in which students were working at the point of application to the course. This data supported a number of the CLSB's own conclusions – such as the need for all Costs Lawyers to have a general understanding of legal aid costs at the point of qualification – and also supported some of ACL's submissions, for example that students often work across different specialisms.

Finally, like ACL, ACL Training asked that we consider including the explanatory table on pages 8 and 9 of the consultation document (which states the rationale for including each knowledge area) into the Competency Statement itself.

CLSB response

The table on pages 8 and 9 of the consultation document was intended to help readers understand the rationale for the knowledge competencies, based on our research findings, so that consultation respondents could meaningfully assess whether each knowledge area should be included. We had not envisaged this forming part of the Competency Statement, however both ACL and ACL Training recommended that it be added in order to aid understanding. Given this feedback, we have incorporated the table into the Competency Statement, subject to some amendments to reflect other feedback (as described further below). We would reiterate, as set out in the consultation document, that the Competency Statement is not intended to detail the specific topics that should be covered within each area of knowledge during the Costs Lawyer Qualification. Learning outcomes for each area will be developed by the CLSB following this consultation, and those learning outcomes will be brought to life by the training provider during course design and delivery.

We carefully considered ACL Training's suggested changes to the knowledge areas in the Competency Statement. For the most part, the proposed changes are presentational – i.e. they do not seek to change the ground covered by our own categorisation – and therefore they remain consistent with our research findings. In the discrete areas where ACL Training felt that additional knowledge requirements should be included, it provided evidence for this (for example, data showing that 34% of students¹ reported undertaking Court of Protection work).

We feel it is important to cast the knowledge competencies in such a way that they do not exclude specialist knowledge that ACL Training has demonstrated is relevant to the work of at least a significant minority of qualifying Costs Lawyers, and their clients by

¹ Based on data captured from course application forms for students who enrolled on the course in 2019 and 2020, being 70 students in total.

extension. Both ACL and ACL Training emphasised the possibility of taking on different types of work following qualification – an issue we also acknowledged in the consultation document – and thus the need for an understanding of general principles in areas of possible specialism to establish a baseline level of competency. ACL Training agreed that individuals undertaking specialist work would benefit from additional training through optional modules and/or CPD, as envisaged in the Competency Statement.

Given the above, we agree that we should amend the knowledge areas in the Competency Statement to take into account the reasoned feedback received from ACL Training insofar as necessary to ensure that core knowledge areas are not excluded and to improve clarity for readers as to how a Costs Lawyer's competencies differ from other types of legal advisers. In pursuit of this, we have recast the knowledge areas to remove four categories (other litigation, budgeting, bills of costs, and points of dispute and reply) and add three, as follows:

- We have introduced the knowledge area of “costs pleadings and process”, which draws in budgeting, bills of costs and points of dispute and reply (rather than these being standalone knowledge areas as proposed) and other technical procedural aspects of costs work as noted by ACL Training. Our intention is that the descriptor “costs process” will cover knowledge of the processes involved in the quantification and assessment of costs, which ACL Training points out is knowledge that is generally transferable between specialist areas. For this reason, we do not feel it is necessary to include a separate “qualification and assessment of costs” knowledge area as suggested by ACL Training.
- We have introduced the knowledge area of “practice and procedure in specialist forums”. This covers the knowledge of specialist legal areas (and their corresponding specialist courts and tribunals) that we had intended to include in our proposed “other litigation” category, and extends further to civil litigation in specialist forums. ACL Training had suggested presenting this area as “costs in special courts”. We feel it is wider than just courts (covering, for example, tribunals and arbitral bodies) and is wider than just costs (extending to knowledge

of the wider dispute resolution processes and substantive issues that arise in specialist forums, which are necessary to understand the costs aspects of a case).

- We have introduced the knowledge area of “the lawyer-client relationship and funding arrangements”, to draw out the advanced aspects of contract law and professional standards knowledge that are essential for advising on costs structuring and lawyer-client fee disputes.

In relation to the additional feedback from ACL:

- We acknowledge that students might switch specialism during or after qualification, and indeed might take on multiple specialisms throughout their careers. We agree with ACL that it is important for the knowledge categories to reflect this. Our research showed that a general knowledge of areas including legal aid, tort (including personal injury and clinical negligence), employment, immigration, family and criminal law would facilitate the switching of specialisms amongst Costs Lawyers and also ensure that a junior lawyer who is asked to do work in any of these areas would have a basic level of knowledge and competency that could be applied to the task, for the benefit of the client. The Competency Statement therefore requires all qualifiers to have knowledge of key concepts and general principles in these areas, alongside more detailed knowledge of core areas that are relevant to the bulk of costs work (such as contract law and general civil litigation). There is then scope and flexibility within the Competency Statement for those who specialise (or want to specialise) in a particular area to gain more detailed knowledge of that area within the framework of the course, through optional modules. Costs Lawyers who switch or acquire specialisms following qualification would be able to access relevant training through CPD courses.
- We recognise the importance of advocacy in a Costs Lawyer’s skillset, particularly given that the CLSB specifically authorises practitioners to exercise a right of audience, and thus must ensure that Costs Lawyers are competent in this area. We agree with ACL that the advocacy landscape continues to change and that the skills needed in this area, and their relative importance, should be kept under

review. During our research – particularly through the second Subject Matter Expert review – we considered at length whether competency in advocacy was best characterised as “knowledge” or as a “skill”. We concluded that the knowledge elements of advocacy – such as an understanding of procedural rules and underlying law – were already captured in the other knowledge categories. The elements that were not captured – the application of legal knowledge to the case and the forum – were better characterised as skills. This is why “advocacy” appears in the skills section of the Competency Statement, rather than the knowledge section.

Consultation question 3: Does the Competency Statement reflect the skills you would expect a newly qualified Costs Lawyer to demonstrate? If not, which skills should be added or excluded, and why?

Six respondents answered this question. All six supported the inclusion of the skills in the Competency Statement.

The LSCP said that it found the skills section particularly useful and appreciated that relationship management – including empathy and managing expectations – as well as self-management were treated as separate skills that must be learned and used on a daily basis. The LSCP provided statistics from its own research in support of the need for competency in communication and relationship management, and highlighted the impact of these skills on consumer outcomes. The LSCP also emphasised the importance of self-management as the first line of defence against lawyers becoming overwhelmed, which can in turn lead to poor performance or ethical failures that can have a devastating effect on consumers. Overall, the LSCP welcomed the CLSB’s proactive approach to fostering positive outcomes for consumers by requiring training providers to develop the identified skillsets in all Costs Lawyers before they qualify.

LawCare made helpful suggestions in relation to the wording of some of the indicative behaviours, to reflect its own learnings and research. LawCare emphasised the importance of proactively teaching emotional competence in legal education and noted that course providers can use its free resources to assist with this. It also highlighted the

need for supervisors to create an environment in which juniors feel free to speak up with concerns or admit mistakes, and thus the importance that workplace culture will have on the likely materialisation of the positive or negative behavioural indicators in the Competency Statement, especially in relation to self-management.

NLS also provided some helpful suggestions in relation to the wording of the behavioural indicators to improve clarity. In addition, NLS felt that the practical application of ethical knowledge should feature in the skills competencies, as should the ability to keep up to date and learn by reflection.

ACL said that it was generally satisfied with the skills proposed and felt that the definitions and behavioural indicators reflected what was expected of a newly qualified Costs Lawyer. ACL suggested that the “effective communication” skill be separated into “legal drafting” and “effective communication”, reflecting the distinction between clients and the court as audiences for a Costs Lawyer’s written work.

ACL Training analysed the proposed skills in the Competency Statement against the outcomes of supervised practice that are currently prescribed for qualification. Clarification was sought as to: (i) why research was included within “agile thinking”, (ii) why business awareness was not a required skill in the Competency Statement, and (iii) whether the CLSB had considered including legal drafting as a standalone skill rather than including it within “effective communication”. ACL Training also noted the likely introduction of compulsory mediation in court processes in the future and observed that ADR/mediation was mentioned only within the “negotiation” skill. ACL Training felt the Competency Statement as it stands would be sufficiently flexible to deal with compulsory mediation, but believed this highlighted the need for continual review.

CLSB response

We welcome the insightful evidence and commentary provided by the LSCP and LawCare as to the importance of the skills in the Competency Statement; it reflects our own findings from the research carried out. We have made the drafting changes suggested by those respondents as well as NLS.

Both ACL and ACL Training commented on the inclusion of legal drafting within the “effective communication” skill, rather than as a standalone skill. We gave this distinction considerable thought during the project (including through deliberation with members of our Expert Panel) since participants in our research clearly saw legal drafting as an important aspect of a newly qualified Costs Lawyer’s work.

We concluded that the practical and procedural aspects of legal drafting – for example, how to prepare a technically accurate bill of costs – are covered in the knowledge areas of the Competency Statement. The skill element of legal drafting relates to how the lawyer’s point is communicated in order to influence the audience: the persuasiveness of the language; the logic and structure of the argument; the clarity of presentation; and so on. Our findings suggested that these skills are equally relevant when a Costs Lawyer is drafting (for example) a letter to an opponent, points of dispute, a funding agreement, a note to a supervisor or an email to a client. This is the rationale for focusing on the skill of effective communication, which can be applied across a range of document types (including technical documents) in conjunction with a Costs Lawyer’s knowledge of law, practice and procedure. The consultation respondents did not provide evidence or reasoning to support splitting out legal drafting as a standalone skill in the Competency Statement. We therefore have not added legal drafting as a discrete skill.

In relation to the other two questions raised by ACL Training:

- *Why is legal research included within “agile thinking”?* Our project research – particularly the semi-structured interviews with junior and supervising Costs Lawyers – suggested that legal research is a skill that is rarely used in isolation. Rather, it needs to be demonstrated alongside other aspects of the skill we identified as “agile thinking”; legal research is inextricably linked in the workplace to identifying a problem that needs to be solved, creatively exploring different questions and answers, and drawing on a range of sources, techniques and ideas to develop a solution. One supervising Costs Lawyer encapsulated this in his interview when he said: “[a trainee] might know the case law really well but putting that together in a practical situation is more difficult”. We therefore felt it was most appropriate for legal research to be framed as part of the wider skill of agile thinking. We have added a new behavioural indicator to help clarify this.

- *Why is business awareness not a required skill?* In our research, “business awareness” came through as an attribute (being commercial) rather than a skill. Being commercial will help new qualifiers apply their skills successfully to the Minimum Standard; see, for example, the fourth positive behavioural indicator for the negotiation skill (*understands the client’s motivations*) or the third negative behavioral indicator for the agile thinking skill (*does not take account of the client’s business or personal context*). In relation to business awareness of a Costs Lawyer’s own organisation, participants in our research generally felt that knowledge or skills relating to running a legal business were not essential competencies for new qualifiers, although practice and people management skills might be required at a later career stage. This is reflected in the suggested learning categories in our [CPD guidance](#).

Consultation question 4: Do you agree that the Minimum Standard is set at the appropriate level to establish the threshold for qualification (and authorisation) as a Costs Lawyer? If not, how should it be adjusted and why?

Four respondents answered this question. The individual Costs Lawyer agreed that the Minimum Standard was set at an appropriate level. ACL Training drew helpful comparisons between the Minimum Standard, the SRA’s Threshold Standard and ACL Training’s current Assessment Specification which incorporates a threshold statement. ACL Training concluded that there was consistency between the three measures and that it should therefore be relatively straightforward for ACL Training to articulate the relationship between the standards in developing its assessments for the course going forward. However, it suggested that the word “negligent” in the first limb of the Minimum Standard could cause confusion and that it might be preferable to state that work is carried out with “due care and skill”. ACL Training also suggested that, to give the standard context, we could articulate the relative standards expected of trainees and expert Costs Lawyers.

ACL agreed with our assessment that the Minimum Standard must be sufficiently high to achieve the regulatory objectives, but not excessively high as to be a barrier to entry

into the profession. ACL felt that it was not clear what a technical error (under the first limb of the Minimum Standard) would look like – noting that by its nature litigation involves the pursuit of technical points – and observed that there was no guidance within the Competency Statement in respect of who would determine whether work is technically incorrect or negligent.

NLS noted the link between the Minimum Standard and the scope of work allocated to a newly qualified lawyer, and suggested adding words such as “in straightforward cases” to the first limb. Both NLS and ACL Training supported the inclusion of the text at the end of the Minimum Standard to the effect that achieving the standard might involve seeking support or guidance from a supervisor or other legal practitioner, and NLS queried how this would be embedded in measuring attainment against the Minimum Standard in the context of the course.

CLSB response

Most of the feedback on this question related to the first limb of the Minimum Standard, namely that “work is rarely technically incorrect and is not negligent”. We agree with ACL about use of the word “technically”. The term was intended to refer to errors in routine matters, as distinct from errors of judgement or work that is arguably incorrect (but also arguably correct). However in the context of a profession that has a focus on technical litigation, we agree the phrasing is unhelpful, and we have removed this element of the first limb. This also addresses NLS’s comment about the need to state the scope of work (because, while the complexity of work might impact the risk that it is incorrect, work should never be negligent no matter the complexity).

We have retained the reference to work being “not negligent”. A key benefit of using this language is that it imports a recognised objective standard, defined in law. Practitioners (including supervisors) are accustomed to identifying negligent work in order to, for example, notify their professional indemnity insurer of potential claims. The concept is also capable of applying to a range of situations taking all the circumstances into account, by asking what a reasonable person would have done in the practitioner’s position. We are also reluctant to substitute “not negligent” for “done with due care and skill”, as suggested by ACL Training, given the potential for circularity if the “skills” in the

Competency Statement inform how “due care and skill” is to be interpreted (which, in our view, they must).

We should clarify that the purpose of the Minimum Standard is to set a threshold for assessment in order to qualify as a Costs Lawyer, not to be a disciplinary mechanism through which to sanction qualified Costs Lawyers for poor conduct. The CLSB will only (and can only) take disciplinary action where there is a breach of our regulatory rules. It is likely that carrying out work which falls short of the Minimum Standard would also constitute a breach of the [Costs Lawyer Code of Conduct](#) (see, for example, principle 4: *provide a good quality of work and service to each client*). However we would not investigate/determine whether a Costs Lawyer has been negligent, we would investigate/determine whether they complied with the Code. We have added wording to the Competency Statement to make this clear, as explained under question 1 above.

NLS asked about how this text at the end of the Minimum Standard would be embedded in the training course: “*Achieving this standard might involve seeking support or guidance from a supervisor or other legal practitioner at appropriate stages, depending on the nature and complexity of the work.*” We envisage this impacting the level at which assessments are pitched in terms of scope and complexity, impacting what is expected of students in their period of supervised practice, and communicating that students might be expected to have detailed knowledge of the costs aspects of an assessment problem or scenario, but not necessarily all other legal aspects, reflecting the working-world relationships between Costs Lawyers and their often legally qualified clients and colleagues.

Finally, in relation to the suggestion that we could articulate the relative standards expected of trainees and experts in order to give the Minimum Standard more context, we agree that this would be useful. We had limited resources for this research project and we took a conscious decision to prioritise competency at the point of qualification, in order to deliver the project within our annual budget. We plan to do more work on defining expected competencies at other career stages in future years, aligned with the [Legal Services Board’s work on ongoing competence](#). We hope to expand the Minimum Standard to incorporate other levels and roles as that work progresses.

Consultation question 5: Do you agree that development of the attributes should be encouraged, as a tool to promote competence, rather than the attributes being specifically measured/assessed at the point of qualification?

Five respondents answered this question. All agreed that development of the attributes should be encouraged. Three agreed that the attributes should not be specifically measured/assessed at the point of qualification, one (the LSCP) felt the attributes should be assessed and one (NLS) did not give a firm view but recognised the challenges of assessment.

ACL felt that the framing of the attributes as characteristics to be continually developed over time aligned well with the CLSB's new approach to CPD introduced in 2021, noting that the new emphasis on individual development would encourage the attributes to be demonstrated without the need for formal assessment.

ACL Training agreed that development of the attributes should be encouraged as a tool to promote competence rather than being specifically measured or assessed at the point of qualification. ACL Training reflected on the approaches of other legal regulators in assessing the personal qualities (other than cognitive ability) of qualifying lawyers and felt that the CLSB's approach of encompassing attributes within the Competency Statement was a welcome and proportionate advancement.

Conversely, the LSCP felt that the attributes were an important element of how Costs Lawyers conduct themselves throughout their careers and, accordingly, the LSCP would like to see some assessment of the attributes even if not done in a standalone exercise. The LSCP felt that assessors could comment on the attributes in training, especially in oral or practical exercises, in an effort to encourage students to work toward these goals, reinforcing the importance of the attributes throughout a Costs Lawyer's career.

Specifically, the LSCP noted that it would like to see some assessment of a student's ability to respond positively to feedback (being accountable), because this is a necessary element of becoming a lifelong learner who maintains ongoing professional competence. Being inclusive was also considered vital, given the lack of diversity in the

legal profession and the low level of change that has occurred over the years. The LSCP felt that providing commentary on a person's ability to be inclusive could go a long way toward changing the culture of diversity and inclusion in the legal community.

NLS highlighted the challenges for junior lawyers, as demonstrated through examples of disciplinary cases in other parts of the legal profession, in demonstrating the "accountable" and "professional" attributes in certain work environments and suggested that training providers might use a "Giving Voice to Values" approach to developing these attributes through the course. NLS noted that some competency frameworks do include (and thus requirement assessment of) attributes of the kind included here, but acknowledged that attributes may not be easy to assess and the place for their assessment may not be a classroom context. NLS also recommended the attributes appear at the start of the Competency Statement, as precursors.

Finally, NLS said that from its perspective outside the profession, it anticipated that the Competency Statement would include a reference to numeracy, given the role of competency frameworks in identifying the special skills and requirements of different professions operating in a shared marketplace.

CLSB response

The main point of divergence between respondents related to whether the attributes should be assessed. In developing the Competency Statement, our desk research indicated that some regulators (within and outside the legal sector) seek to assess professional attributes of this kind through objective criteria, but many do not; there does not appear to us to be a clear market standard.

The detail of the LSCP's response is informative. The type of assessment expected is described as providing commentary / commenting on a student's demonstration of the attributes, encouraging students, and emphasising the importance of the attributes. We feel this kind of approach is in fact well-aligned with our vision for a non-assessed methodology. We would emphasise that a lack of graded assessment is not an invitation to training providers or students to ignore this aspect of the Competency Statement. As noted in the consultation document (at page 13), we would expect to see training

providers incorporating the attributes into their course design, and we will take this into account in evaluating and accrediting delivery of the course. This will allow providers the space to be creative in bringing the attributes to life for students, including potentially through a Giving Voice to Values approach as suggested by NLS. For these reasons, we consider our approach to be consistent in practice with the LSCP's suggestions, and we will ensure that having a coherent strategy for developing the attributes is a criterion for accreditation of course providers.

Also for the above reasons, we do not consider the attributes to be precursors to the other elements of the Competency Statement, as suggested by NLS. We therefore remain of the view that including them at the end of the document (rather than upfront) is appropriate.

In relation to numeracy – which, if it were to be included in the Competency Statement, we would consider a skill – we too found it interesting that mathematical proficiency did not emerge from our research as a core skill for a junior Costs Lawyer. It might be that numeracy is so fundamental that it is an assumed skill (although literacy was not an assumed skill). It might be that numeracy is a necessary component of other knowledge and skill elements, and thus already covered indirectly. Or it might be that high-functioning numeracy skills are seen as more important for other professionals, such as accountants and actuaries, while Costs Lawyers' niche skillset relates to the advocacy and advice elements of their work. These are guesses; we do not have sufficient evidence to test these propositions. Thus, while it might instinctively feel like an omission, we have no evidence from our research or otherwise to justify adding numeracy as a critical competency from a regulatory perspective.

Next steps

Annex 1 is an amended version of the Competency Statement, showing the changes that have been made to address feedback from the consultation, as described in this outcome report. A final (clean) version of the Competency Statement will be published [on our website](#).

Page 13 of the consultation document summarises how we expect the Competency Statement to be used going forward. The next stage of our work is to use the

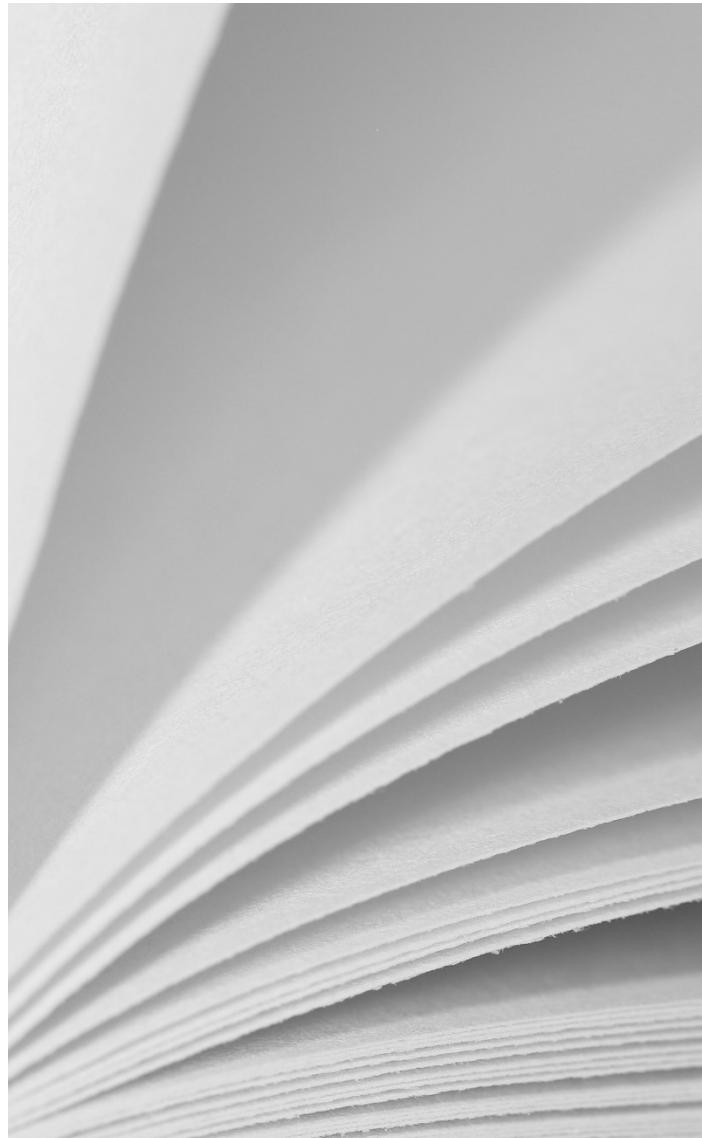
Competency Statement to develop new education standards and learning outcomes for the Costs Lawyer Qualification. Alongside that, we will develop a new training provider accreditation scheme to ensure consistency and transparency in the accreditation process.

We may consult again on those documents if necessary, following which we will apply to the Legal Services Board for approval of revisions to our Training Rules and course documentation. The Competency Statement will form part of, and provide evidence for, that approval process. For the avoidance of doubt, we do not expect training providers or students to formally adopt and use the Competency Statement until that process is complete (and an implementation period has elapsed). However we encourage continued engagement from all stakeholders as the next stage of our work progresses.

Costs Lawyer Competency Statement

2 February 2022: Version published following
consultation, yet to be formally implemented
through changes to regulatory arrangements

Costs Lawyer Standards Board



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About the Competency Statement

How to use this document

The CLSB regulates Costs Lawyers in England and Wales. The requirements for practising as a Costs Lawyer are set out in the CLSB's Practising Rules. Practising Rule 1.1 establishes that, in order to practise as a Costs Lawyer, a person must first qualify as a Costs Lawyer in accordance with the CLSB's Training Rules. Once a person has qualified in this way, they can apply to the CLSB for a practising certificate.

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. It sets out:

- The categories of legal and technical **knowledge** that a Costs Lawyer will possess at the point of qualification
- The **skills** that a Costs Lawyer will demonstrate
- The **Minimum Standard** to which the ~~Costs Lawyer's~~^{above} knowledge and skills will be applied
- The **professional attributes** that will help a Costs Lawyer meet the Minimum Standard and progress successfully beyond qualification

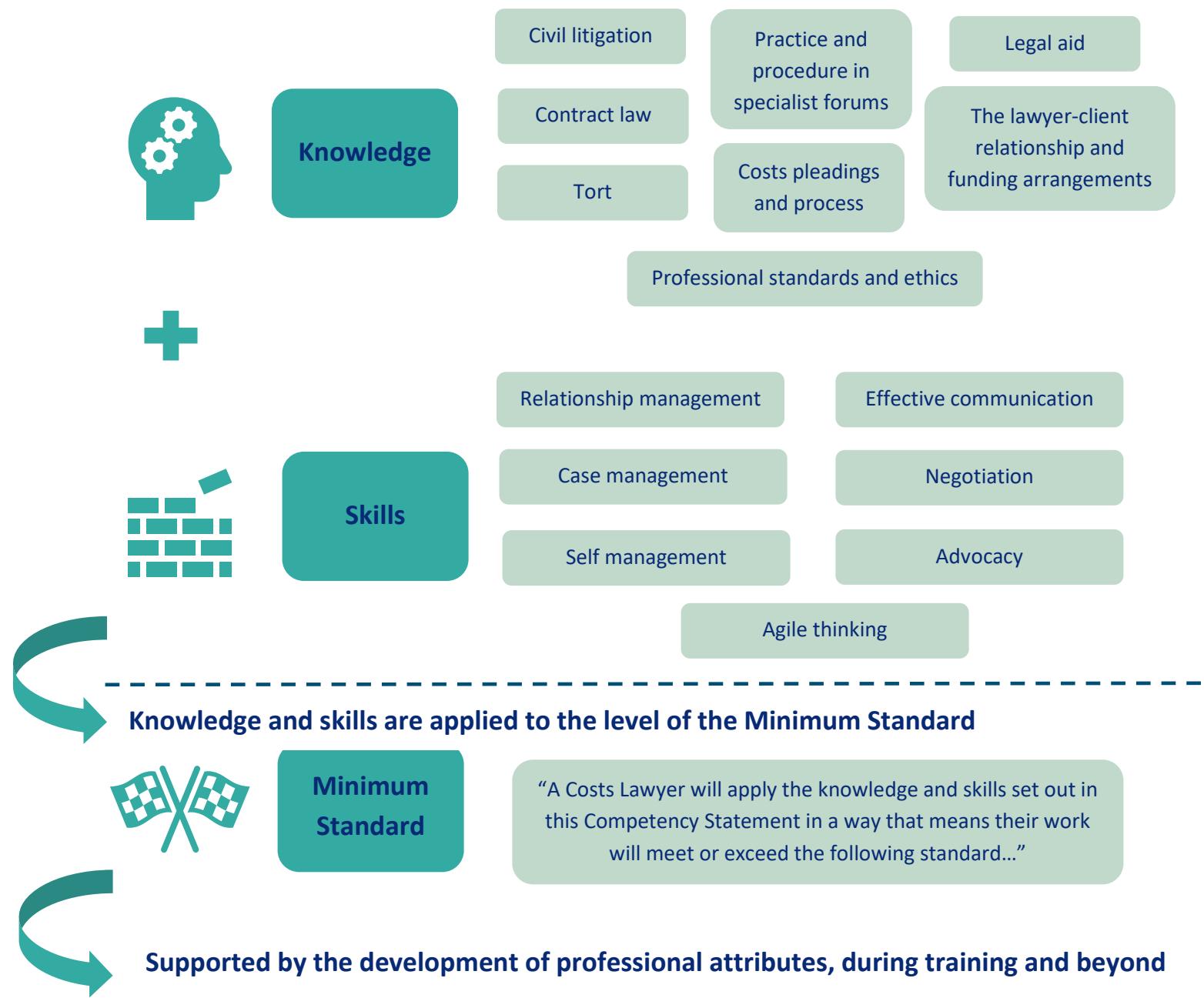
The Minimum Standard is described on page 5, followed by the expected knowledge and skills. These elements of the Competency Statement set a threshold or baseline standard that all newly qualified Costs Lawyers will meet. Many individual Costs Lawyers will exceed this standard; they might have additional skills or knowledge that they bring to the role, or they might apply their skills and knowledge at a level above the Minimum Standard. But in all cases, the minimum requirements set out in this Competency Statement must be met.

The purpose of the professional attributes is different. Our research identified eight attributes that are particularly important for enabling Costs Lawyers to apply their skills and knowledge in a way that meets or exceeds the Minimum Standard. These attributes should be nurtured during a Costs Lawyer's training and continually developed throughout their career. However, the CLSB does not require newly qualified Costs Lawyers to demonstrate the attributes to any kind of defined minimum standard.

This Competency Statement should be read in conjunction with the Costs Lawyer Handbook, ~~including the Code of Conduct, which applies to all Costs Lawyers including new qualifiers.~~ In particular, the Competency Statement forms an integral part of the service requirements set out in the Code of Conduct, especially under Principle 4 (requiring Costs Lawyers to provide a good quality of work and service to each client). Failure to meet the requirements of the Code of Conduct could result in disciplinary action.

How the elements fit together

The relationship between the elements of the Competency Statement is summarised below.





Professional attributes

Curious

Proactive

Professional

Commercial

Inclusive

Who should use this document

This document is for use by:

- **Prospective Costs Lawyers** – To allow those who are training to become a Costs Lawyer, or are considering becoming a Costs Lawyer, to better understand what they will learn during their training and assess whether the profession is a good fit for them.
- **Training providers** – To allow organisations that deliver, or that are interested in delivering, elements of the Costs Lawyer Qualification to develop valid and relevant course programmes, materials and assessments.
- **The public, clients and courts** – To help those who interact with the profession to understand what they can expect from a Costs Lawyer at the point of qualification.
- **Employers** – To guide internal training and supervision programmes, and create opportunities for employees to develop and build on the competencies.
- **The CLSB** – To facilitate the development of rules and regulations in relation to the Costs Lawyer Qualification that are targeted at ensuring the level of competency described in this Statement.

The Minimum Standard

At the point of qualification, a Costs Lawyer will apply the knowledge and skills set out in this Competency Statement in a way that means their work will meet or exceed the following standard:

1. Work is ~~rarely technically incorrect and is~~ not negligent.
2. If work involves the exercise of professional judgement, that judgement is reasoned and defensible.

3. Work demonstrably assists the client and puts the client in a better position than if the work had not been carried out.
4. Work is fit for, and appropriate to, its purpose.
5. Work is performed to this standard within a reasonable timeframe.

Achieving this standard might involve seeking support or guidance from a supervisor or other legal practitioner at appropriate stages, depending on the nature and complexity of the work.

Legal and technical knowledge

Newly qualified Costs Lawyers will demonstrate a sound understanding of at least the following nine areas of legal knowledge. The specific topics that they should be familiar with in each area of knowledge will change over time, in line with changes to law and practice.

Details of the specific topics that are currently prescribed by the CLSB can be found in the course documentation. An indication of the relative depth and breadth of knowledge required in each area is included in the table below.

Depth and breadth of knowledge required			
	Key concepts and general principles	Detailed knowledge and understanding	Optional additional knowledge, depending on intended practice area
Civil litigation	✓	✓	
<u>Other litigation</u> <u>Practice and procedure in specialist forums</u>	✓		✓
Legal aid	✓		✓
Contract law	✓	✓	
Tort	✓		✓

<u>Budgeting</u> <u>Costs pleadings and process</u>	✓	✓	
<u>Bills of costs</u>	✓	✓	
<u>Points of dispute and replies</u> <u>The lawyer-client relationship and funding arrangements</u>	✓	✓	
Professional standards and ethics	✓	✓	

The table below summarises why an understanding of each knowledge area, by all newly qualified Costs Lawyers, is considered important.

Civil litigation	This informs most cases and is fundamental to the job, including knowledge and understanding of the Civil Procedure Act 1997 and the Civil Procedure Rules. This area includes the knowledge required to be a competent advocate.
<u>Other litigation</u> <u>Practice and procedure in specialist forums</u>	A general understanding of the rules and procedure for employment, immigration, family and criminal litigation is necessary, given that Costs Lawyers may practise in any costs specialism once qualified, <u>as is an understanding of the rules and procedure of the Supreme Court, Court of Protection and arbitral tribunals</u> . Those specialising in <u>these types of these areas</u> will benefit from additional training through optional modules and/or CPD.
Legal aid	The complexity of the legal aid process (and infrequency of cases for non-specialists) makes this area difficult for newly qualified Costs Lawyers, and yet economics dictate that junior lawyers often run these files.
Contract law	This is frequently relevant to understanding the underlying case as well as the legal obligations that govern costs liability, <u>such as solicitor retainers, cost indemnities and contingent fee agreements</u> .
Tort	A general knowledge of tort is relevant to understanding the underlying case in personal injury and clinical negligence claims. Those specialising in

	these areas will benefit from additional training through optional modules and/or CPD.
<u>Budgeting Costs pleadings and process</u>	This is a <u>The quantification and assessment of costs are core, routine areas for junior Costs Lawyers, requiring unique technical and strategic understanding applied across different areas of law. Preparing documents such as budgets, bills of costs and points of dispute and reply are tasks that are often carried out without close supervision at an early stage of a Costs Lawyer's career, and may require complex analysis and skillful presentation.</u>
<u>Bills of costs</u>	This is a core, routine area for junior Costs Lawyers that is often carried out without close supervision at an early stage of their career.
<u>Points of dispute and replies</u> <u>The lawyer-client relationship and funding arrangements</u>	This is a core, routine area for junior Costs Lawyers which can be complex and requires skillful presentation. Specialist knowledge of the arrangements that govern costs in legal proceedings (such as solicitor retainers, costs indemnities and funding agreements, as well as the Solicitors Act 1974) enables Costs Lawyers to advise on costs structuring and budget management, and to act in lawyer-client fee disputes.
Professional standards and ethics	This is necessary to preserve the reputation of the profession, retain an individual's regulated status, <u>and</u> protect the interests of clients <u>and the wider public</u> , <u>and act in lawyer-client disputes (including knowledge of the Solicitors Act 1974)</u> .

Skills

Newly qualified Costs Lawyers will demonstrate the skills set out below in carrying out their role. For each skill, behavioural indicators have been used to provide examples of what it looks like when someone displays the skill (positive indicators) or lacks the skill (negative indicators).

The behavioural indicators are designed to help trainee Costs Lawyers understand what is expected of them, and help training providers and supervisors know what to look for when assessing whether a skill is being demonstrated. Inevitably, some skill areas overlap and one behaviour might indicate a number of skills. Equally, the indicators are not exhaustive; a skill can be demonstrated in many ways and the indicators should be taken as a guide.

Relationship management	What is it? The ability to build and manage constructive relationships with stakeholders of all kinds.
Why is it important?	Costs Lawyer work requires regular interaction and engagement with clients (sometimes lay clients), colleagues and other members of the wider legal profession. Building and maintaining good working relationships establishes trust and influence, and requires empathy, collaboration and good communication skills.
How does it help?	People who demonstrate this skill will be sensitive to how the frequency and content of their oral and written communications impact others and manifest in outcomes.
Positive behavioural indicators <ul style="list-style-type: none"> 1. Is empathetic to the needs and motivations of those they interact with – provides support beyond explanation of legal issues 2. Manages <u>client</u> expectations – explains process, cost and timeframe, including factors that could affect these, and updates as necessary 3. Develops good working relationships with colleagues 4. Engages with opponents in a professional and constructive manner, regardless of how others conduct themselves 5. <u>Recognises that colleagues and clients may have different attitudes and perspectives and can manage these effectively</u> <u>Deals effectively with different personalities</u> 	Negative behavioural indicators <ul style="list-style-type: none"> 1. Communicates to clients a lack of interest in, or time for, their matter (e.g. by openly prioritising one client over another) 2. Does not keep other team members informed of critical issues, new work coming in or their caseload generally 3. Does not share know-how with the group 4. Lacks self-awareness and allows own emotions to impact negatively on relationships with others

Case management	What is it?	The ability to anticipate, respond to and proactively drive the progress of all cases the Costs Lawyer is working on.
	Why is it important?	Following qualification, Costs Lawyers are expected to manage their own caseload, albeit usually supervised, and seek input when and where necessary. Using technology to help organise tasks, as well as employing good organisational skills, ensures important dates and details are not overlooked.
	How does it help?	People who demonstrate this skill will be able to prioritise tasks and juggle cases at different stages of completion.
	Positive behavioural indicators	Negative behavioural indicators
	<ol style="list-style-type: none"> 1. Applies legal knowledge and skills to all cases effectively 2. Keeps to schedule – sticks to agreed processes for ongoing file review, diarises and meets important deadlines 3. Understands the value of process and abides by it, even if routine/repetitive 4. Plans ahead for work involved on a file – estimates time involved and considers impact on existing caseload and other members of the team 5. Regularly informs stakeholders of ongoing costs and file progress as well as potential issues and problems 6. Liaises with the client on routine matters and, where appropriate, more substantive technical issues 7. Is able to work without constant supervision 	<ol style="list-style-type: none"> 1. Persistently underestimates the time involved in tasks 2. Demonstrates lack of preparation or organisation 3. Displays poor time recording practices when charging on an hourly basis 4. Presents supervisors with problems without first thinking through potential solutions 5. Fails to properly onboard clients – works without an adequate retainer or fails to provide the client with prescribed/regulatory information 6. Fails to seek client instructions or otherwise clarify client instructions before proceeding 7. Does not follow court procedure (e.g. misses filing deadlines or important procedural steps)

Self management	What is it?	The ability of a Costs Lawyer to recognise their own emotions, limitations and doubts, understand how these could influence their conduct, and manage their behaviour accordingly.
	Why is it important?	Costs Lawyers typically work on cases that are demanding on personal resource – cognitive, emotional and physical. They engage with diverse clients ranging from those expert in adversarial communications to distressed individuals unfamiliar with the law. Being able to effectively manage oneself and the demands of others helps protect <u>personal mental</u> wellbeing, <u>and maintains</u> expected quality of work output <u>and avoid ethical failings</u> .
	How does it help?	People who demonstrate this skill will be able to balance competing demands on their personal resources, <u>act with integrity</u> and seek help and support when required.
Positive behavioural indicators		Negative behavioural indicators
<ol style="list-style-type: none"> 1. Takes responsibility for own professional decisions and notifies supervisors of mistakes quickly 2. Maintains a professional <u>distance from clients' emotions</u> <u>boundary with clients</u> 3. Is able to motivate to work alone, albeit with supervision, on long projects 4. Recognises when to seek help and guidance <u>(e.g. when working beyond competence or having difficulty managing workload)</u> 5. Is confident to say when they do not agree or challenge something they do not understand 6. Is able to deal with situations involving another's negligence or dishonesty (e.g. on the part of an instructing lawyer) 6.7. <u>Reflects on their own performance and takes action where needed</u> 		<ol style="list-style-type: none"> 1. Reacts negatively to perceived criticism 2. Covers up mistakes and tries to avoid consequences 3. Lacks confidence in work output or decisions – risks spending too much time on a matter or avoiding tasks 4. Takes on too much work, at risk to themselves and their work 4.5. <u>Ignores unethical behaviour</u>

Agile thinking	What is it?	The ability of a Costs Lawyer to adapt their approach depending on the circumstances and apply knowledge, ideas and technologies to novel situations.
	Why is it important?	Costs Lawyers will inevitably face issues with which they are unfamiliar either because of changes in the law or due to a lack of experience. Agile thinking is demonstrated by finding new ways of using existing knowledge and resources as well as undertaking legal research to further a client's case. Knowing how to undertake and apply legal research helps to create confidence in relationships with clients and supervisors and requires a knowledge of available resources and good verbal reasoning skills.
	How does it help?	People who demonstrate this skill will display a willingness to take on varied work and find alternative solutions.
	Positive behavioural indicators	Negative behavioural indicators
<ul style="list-style-type: none"> 1. Deploys legal research resources efficiently and effectively 2. Proactively keeps own legal knowledge and skills up to date 3. Uses initiative to research a point and present it to their supervisor 4. Recommends a range of options to the client 5. Is able to identify new ways of approaching an issue which might be beneficial to the client or practice (e.g. the application of an innovative technology) 6. <u>Draws on a range of sources, techniques and ideas to develop solutions to problems</u> 6.7. Can tackle large problems by breaking them down into constituent parts 7.8. Seeks the input of colleagues on new approaches 8.9. Can adapt approach in a tight timescale 		

Effective communication	What is it?	The ability to identify and use a method of communication that is appropriate for the circumstances in order to convey relevant information clearly.
	Why is it important?	Costs Lawyers are required to communicate concisely and accurately when advising clients – orally and in writing – and when working with colleagues. They are also required to draft formal legal documents including bills of costs, points of dispute, replies and skeleton arguments. Adopting an effective, contextualised form and style of communication is critical in ensuring a positive outcome for the client.
	How does it help?	People who demonstrate this skill will have a good command of the English and/or Welsh languages and will structure their communications to ensure they are both accessible to and appropriate for the intended audience and situation.
Positive behavioural indicators		Negative behavioural indicators
<ol style="list-style-type: none"> Explains the complicated simply Uses plain language and avoids jargon and abbreviated terms Plans and structures drafting to aid the reader's understanding Is able to engage supervisors and colleagues on technical issues and provide sufficient and salient information for them to give helpful advice and feedback Understands when and how to engage with different methods of communication Adapts communication style to suit the situation and audience 		<ol style="list-style-type: none"> Gives poorly structured advice where the point is lost or obscured Displays poor presentation, grammar or spelling Fails to <u>listen</u> <u>take account of others' views</u> (e.g. <u>to</u> a client, instructing solicitor, supervisor, judge) Produces something 'academic' which is accurate but not helpful to a court or client in practice Does not know or does not apply drafting conventions for formal documents

Negotiation	What is it?	The ability to identify what motivates people and then interact constructively with others to find solutions to problems that align with those motivations.
	Why is it important?	Newly qualified Costs Lawyers will regularly settle their cases out of court, through exchange of correspondence as well as calls and meetings. Being able to negotiate with other Costs Lawyers and mediate between parties can lead to better outcomes for clients in terms of time and costs.
	How does it help?	People who demonstrate this skill will understand the principles of mediation, the different methods and styles of negotiation and how best to adapt their own preferred, or default, style to the situation.
	Positive behavioural indicators	Negative behavioural indicators
	<ol style="list-style-type: none"> 1. Is able to recognise the approach being taken by the other side and respond accordingly 2. Identifies the most appropriate forum for settlement depending on the case, issues, client and opponent 3. Can spot irrelevant issues and deal with them appropriately 4. Understands the client's motivations – agrees a negotiating strategy with the client that is aligned to that client's individual needs 5. Can employ basic mediation skills and recognises when to instruct a professional mediator or other third party 	<ol style="list-style-type: none"> 1. Becomes too emotionally or personally involved with a point or approach 2. Aims to achieve an objectively 'good' outcome, without understanding what the client actually wants 3. Implements a negotiation strategy that does not account for strengths or weaknesses of the client's or opponent's position 4. Ignores indications of an opponent's motivation or strategy 5. 'Wages war' with the other side in a way that damages the client's prospects of successful settlement

Advocacy	<p>What is it? The ability to present orally a reasoned argument that conveys the strengths of a client's case within the framework of the forum's rules.</p>
Why is it important?	<p>Costs Lawyers have a right of audience on matters relating to costs. They are expected to have advocacy skills which they can deploy in assisting counsel or making submissions and applications themselves, <u>while upholding their duty to the court in the administration of justice</u>.</p>
How does it help?	<p>People who demonstrate this skill will be able to apply costs rules and procedure, determine relevance and admissibility of evidence and arguments, think on their feet and deliver with confidence, <u>always within the bounds of their ethical duties</u>.</p>
<p>Positive behavioural indicators</p> <ol style="list-style-type: none"> 1. Applies relevant knowledge of civil and other litigation effectively 2. Is rigorous in knowing all key issues in a case and the parties' arguments in relation to them 3. Draws out the strengths and weaknesses of each party's case 4. Is able to think on their feet and respond to opposing arguments and questions 5. Presents arguments in a structured and accessible manner, <u>making use of relevant evidence, but can also pivot between different points</u> 6. Knows when to seek advice from or instruct counsel 7. Is professional and courteous, and <u>understands acts in accordance with the etiquette of the particular forum</u> 8. Takes instructions from the client during proceedings if novel issues arise 9. Recognises the boundaries of their rights of audience relating to costs 	<p>Negative behavioural indicators</p> <ol style="list-style-type: none"> 1. Is unable to switch from a pre-prepared approach, either in terms of style of delivery or the order in which points are made 2. Uses inappropriate or aggressive language 3. Fails to appreciate the wider context (i.e. non-cost elements) of the case 4. <u>Fails to cite legal authorities, materials or procedural rules appropriately</u> 5. <u>Fails to recognise and challenge inappropriate use of evidence by an opponent</u> 4.6. <u>Allows the court to be misled</u>

Professional attributes

We have identified eight attributes that are particularly important for enabling Costs Lawyers to apply their skills and knowledge in a way that meets or exceeds the Minimum Standard.

While the CLSB does not require newly qualified Costs Lawyers to demonstrate these attributes to a particular standard – and does not require training providers to specifically assess the attributes – a newly qualified Costs Lawyer will find it easier to meet the level of competency expected of them (and to meet the expectations of their employer) if they have developed these attributes during their training.

Attribute	A new qualifier with this attribute is more likely to:
Self-sufficient	Work independently and manage own caseload
Diligent	Pay attention to detail and use the rigour of process
Accountable	Advocate for and own decisions, identify areas for self-improvement and respond positively to feedback
Curious	Investigate legal issues, identify innovative solutions and apply different approaches in daily practice
Proactive	Seek out and analyse solutions before asking for guidance on their application or possible alternatives
Professional	Recognise and do the right thing, even when challenged, and respectfully support others to do the same
Commercial	Deal effectively with ambiguity and uncertainty, contextualise advice and provide risk assessment that extends beyond pure legal analysis
Inclusive	Be open to and learn from different perspectives, and foster equality and diversity within the profession and beyond