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# Consultation outcome

## CPD for Costs Lawyers

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19 March 2020

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Costs Lawyer Standards Board

CLSB  
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## Overview

The Continuing Professional Development (CPD) Rules 2017 establish requirements for Costs Lawyers to maintain their professional competence during their career. In 2019 the CLSB developed proposals to amend the CPD Rules to better reflect:

- Legal Services Board (LSB) policy and requirements;
- changes in the wider legal sector;
- the need for clarification of the current rules.

A [consultation](#) on the revised CPD Rules and associated guidance was issued on 4 December 2019 and closed on 2 February 2020.

Under the reforms, we proposed maintaining a twelve-hour minimum CPD requirement whilst greatly increasing the flexibility for Costs Lawyers to decide how best to meet their training needs. We proposed a process whereby Costs Lawyers were required to identify their training needs, set objectives and evaluate the success of their training against those objectives. We provided draft rules and guidance, and a suggested (non-

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compulsory) template that could be used by Costs Lawyers for planning and recording their continued development together with a worked example.

We received responses to the consultation from ACL Training (the training arm of the Association of Costs Lawyers), six individual Costs Lawyers, the Solicitors Regulation Authority (SRA) and the Legal Services Consumer Panel (LSCP). The responses were largely supportive of the changes overall. There was some disagreement on individual issues, which will be discussed below, together with other comments and helpful suggestions. This paper sets out how the CLSB will take forward the proposals in light of respondents' feedback. We would like to thank all those who took the time to respond to the consultation.

It is worth noting that the LSB issued a [call for evidence](#) in relation to ongoing competence on 21 January 2020. Their initial findings on the regulated legal sector are that whilst there is a focus on education and training on qualification, there is less focus on assuring competence post qualification, except for CPD which is largely based on self-assessment. They also find that there is some evidence of legal professionals not maintaining competence or acting beyond their competence.

The LSB's own policy on CPD (to which our consultation was in part a response) has been to encourage regulators to move away from an approach that requires practitioners to spend set hours on accredited courses towards a more flexible outcome-based approach. Although the LSB's current work on competency is at an early stage, there is as yet no indication that the review will lead the LSB to move away from its outcome-based approach to CPD. Rather, the focus appears to be on the way in which those outcomes are then verified by regulators and competency is assured. The review mentions, for example, that in some other sectors professionals (such as doctors) are required to undertake periodic formal reassessments and that these measures have had some success.

We considered whether to delay a decision on these reforms in light of the LSB review. However, we have decided that we will proceed with the changes now because we believe that they represent an improvement to the current system and will help practitioners to take a more flexible and thoughtful approach to their continuing

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development. This in turn will, in our view, place Costs Lawyers in a better position in any debate over whether some form of compulsory reassessment or reaccreditation is necessary or justified.

## Responses to consultation questions

In this section we summarise respondents' views on each question and set out the CLSB's decision in light of the responses received.

### Overall approach

**Consultation question 1: Do you agree that the proposed approach strikes the right balance between outcomes-focused learning and provision of a practical framework within which Costs Lawyers can track and report their ongoing training? If not, why?**

The proposed approach was generally supported.

ACLT felt that the proposals reached the right balance between focused learning and the provision of a practical framework. They felt that the proposal makes the standards expected explicit, and makes it clear what will be looked at on audit. ACLT said that the proposal to maintain a minimum points system was the right approach because practitioners quite often benefitted from a clear guide to the minimum required.

ACLT stated that lawyers in other branches of the profession have found needs assessments, outcome setting, and reflection difficult. They agreed that the proposal helpfully includes some categories that can be used as a guide by Costs Lawyers upon which their development objectives can be based. However, they recommended that there should be further consideration as to how easy it is for a Costs Lawyer to conceptualise what they are being asked to do and referred to their response to consultation question 3.

The LSCP felt that the proposed rules brought a welcome flexibility around the content and development of the training. For example, the LSCP supported the removal of a rigid list of activities that count towards CPD and any cap on the number of points available

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for each type of activity. It also supported the view that activities carried out as part of normal practice cannot count towards CPD activity.

The LSCP agreed that the twelve CPD hours should not be a target but a minimum requirement. However, it said that the CLSB should consider how it can encourage Costs Lawyers to go beyond this minimum requirement.

Of the three individual Costs Lawyers that responded to this question, one agreed and another agreed in part but had suggestions as to what else could be included in the proposals.

The draft guidance had suggested four learning categories that Costs Lawyers might wish to use to assess their needs and set objectives, as follows:

- Legal and technical competence
- Professional ethics and behavior
- Dealing appropriately with your client and third parties
- Practice management

The respondent suggested that “technical” should also include the technicalities of doing your job such as using certain IT software, social media and writing skills. They also suggested that “professional ethics and behaviour” should include areas such as equality and diversity training, time management and areas to help Costs Lawyers stay mentally well under pressure. This respondent supported the inclusion of management skills as a category, stating that these are critical to a good working environment.

The third Cost Lawyer respondent disagreed with the approach because they said that the majority of Costs Lawyers do not engage in practice management and this should not therefore be included as a compulsory CPD requirement.

The SRA felt that the CLSB’s proposals were positive and agreed with the move towards a less prescriptive, more reflective and outcomes-focused approach to ensure the continuing competence of Costs Lawyers. The CLSB proposals linked continuing competence to the professional standards and this was valuable. The SRA noted that the draft rules require Costs Lawyers to continuously develop their knowledge and practical

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skills to help them meet the standards set out in the Costs Lawyers' Code of Conduct and considered this to be positive.

However, the SRA stated that it considered maintaining a twelve-hour minimum requirement to be unnecessary. Further it did not feel that "on the job learning" (routine casework and work for which the client is charged) should be excluded from CPD. The SRA said that it believes that solicitors learn best if they have freedom to choose the most appropriate learning for them and that it provides a broad range of examples, including workplace learning (for example via secondment within a firm) as part of its continuing competence toolkit.

### **CLSB decision**

We have decided to maintain the overall approach; based on responses received, we remain of the view that the proposals achieve the right balance between flexibility and a practical framework. This will include maintaining the twelve-hour minimum CPD requirement as a part of that balance.

We considered carefully whether, as suggested by the SRA, we should allow for "on the job" learning through normal casework for which the client is charged to count towards the twelve-hour minimum. We feel that this would place insufficient emphasis on the need for a Costs Lawyer to "step out" from their daily work in order to consider their training needs. That is not to say that we minimise the importance of taking on new areas and types of work, and working in new environments, as part of professional development. In our view preparation for new challenges by appropriate learning will only assist that development. We remain open to new evidence in relation to this point, and we will follow with interest any future evaluation that the SRA carries out of its scheme once it has been in operation for long enough to draw firm conclusions.

We are not proposing that practice management is a compulsory part of CPD if the Costs Lawyer has no such role or involvement. Our draft guidance stated:

*"There is no need to take CPD in a particular category if you consider that you do not have training or development needs in that category for the year in question."*

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*For example, you may not be involved in practice management in your role, or you may have focused on a particular category and principles last year and met your objectives. However, given the constantly evolving nature of costs law, it is likely that you will always need to undertake some activity in relation to your legal and technical competence if you are to meet your obligations under the Code of Conduct.*

*Adoption of these particular categories is not compulsory – but you must ensure that your needs are assessed and objectives set in light of the principles in the Code of Conduct (CPD rule 2.1).”*

It may be that the individual Costs Lawyer who responded under the misunderstanding that CPD in practice management was compulsory for all Costs Lawyers read the proposed CPD template in isolation from the guidance, and assumed that all categories had to be completed. We appreciate the risk that other practitioners could take the same approach upon implementation of the new guidance; we will therefore amend the template (which is itself not compulsory) to put the position beyond doubt.

Finally, we agree with the Costs Lawyer respondent who stated that acquiring certain practical skills as well as training in some of the “softer” skills can be important and we will emphasise this in the guidance.

## Guidance

**Consultation question 2: Is the guidance clear as to what activities will qualify as CPD? Should the guidance cover any other topics?**

ACLT and the SRA agreed the guidance was clear and had no further suggestions.

The three Costs Lawyers who responded to this question agreed that the guidance is clear. One raised an important query in relation to the when research and reading will count towards CDP, given that draft Rule 3.3(a) says that “work, research or reading that is part of routine practice or casework” will not count towards CPD, whilst draft Rule 3.1(f) indicates that “research and reading” generally will form part of CPD. The

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respondent confirmed that having been out of the profession for some years they recently needed to spend a number of hours familiarising themselves with new regulations before working on their files and queried whether this research would count towards CPD.

Another of the individual Costs Lawyers, whilst agreeing that the guidance was clear, felt that accrediting two CPD points for ACL membership as we proposed is “more than a little nepotistic” and that there was no guarantee that members read the information that ACL sends round. The respondent stated those Costs Lawyers working in solicitors’ firms had access to materials (for example the Law Society Gazette) and queried why two points were not accredited for this.

### **CLSB decision**

We agree that research done in order to prepare to return to casework or to take up a new role (as opposed to working on the files themselves) can and should count as CPD and we will amend the guidance to remove any doubt. Recognising the need for such preparation is an important part of the continuing competence process. We emphasise however that the twelve-hour requirement is a minimum – and in these circumstances a Costs Lawyer may find that they require more than the twelve hours in this particular year in order to be satisfied that they are able to meet the appropriate competencies.

We note the comments made in relation to ACL membership. The two points allowance is based on an appropriate use of the materials supplied by ACL. Those Costs Lawyers that do not read the ACL materials should not include the two points in their record. Costs Lawyers working in solicitors’ firms may also have access to materials which will provide reading and research which might form part of their CPD and they can record the time as CPD points appropriately. Given the number of regulated Costs Lawyers who are also ACL members, the two point attribution is intended to give Costs Lawyers a ready-reckoner for the likely level of CPD attained through active membership; on balance, we feel it is useful to retain this.



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## Supporting materials

### **Question 3: Are the template and worked example useful? Are there any other materials that would help practitioners in implementing the proposals?**

ACLT felt that the suggested template for the CPD process and the worked example were useful but supplied some suggested additional materials. They stated that reflective practice is a continuous process with all learners bringing their own knowledge, ideas and beliefs to the process. The CLSB proposals seek to introduce this cyclical approach to development and ACLT felt that Costs Lawyers may benefit from this being made more explicit within the guidance. ACLT supplied a draft process map which it suggested should be included in the guidance to reinforce the idea that the process will have no clear beginning and end, that learning goes beyond the reporting requirements and requires continual review by the learner.

ACLT felt that the four guideline categories of development could be better presented to enable Costs Lawyers to conceptualise the categories for learning purposes. They stated that learning or development is an acquisition of concepts and it is helpful to think of existing knowledge in these terms because it allows the building of mental structures which can act as scaffolding for building a broader or deeper knowledge base. ACLT submitted a draft document which they suggested could be introduced into the guidance to promote the idea that the four guideline categories are concepts upon which learning can be built.

ALCT also suggested that it may assist Costs Lawyers if they were provided with clear guidance as to how to set outcomes and objectives.

Of the three individual Costs Lawyers that responded to this question, two agreed that the materials were useful. One Costs Lawyer respondent pointed out that when CILEX and the SRA changed their CPD arrangements they offered talks and presentations to firms to assist in implementation. As an example, the respondent stated that CILEX has regional branches which organise talks, including talks on management (which are paid for from branch subscriptions).

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A fourth Costs Lawyer provided additional comments on the template, which they felt was far too onerous. They stated that the form reminded them of the Personal Development Plan previously used by ACL which took a very unreasonable length of time to think through and reflect on. The respondent felt that the reflection process is something professionals would do in any event; but being asked to write those reflections is condescending, bearing in mind that solicitors are not required to fill in proof of CPD points anymore and are just required to keep on-top of their continual development.

The SRA agreed that the template and case study were helpful.

### **CLSB decision**

We will publish the template and case example given that they were generally seen as helpful. We will amend the documents to stress that obtaining CPD in any particular category is not compulsory and should be based on need. For some Costs Lawyers thinking about training in this way will be new and the materials will support them through that process. Other regulators such as the SRA and the BSB also publish draft CPD templates to assist their regulated communities. However, as the template states, its use is not compulsory. The important point is that practitioners should go through the right reflection and action process and should be able to demonstrate their compliance with this as necessary on audit – but how they record this is up to them.

We agree that the process map and table provided by ACLT are helpful and we will consider how we might publish them as part of the guidance package.

We understand that ACLT is in the process of developing CPD modules, but it will often be the case, as now, that Costs Lawyers may need to use courses from other providers, including from fellow legal practitioners and from outside the legal profession. In fact, the new rules provide much greater flexibility as to the ways that CPD can be carried out in future.

We will also consider what other supporting materials we can supply in the run up to implementation. The CLSB is not in a position to provide bespoke regional assistance, as

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it does not benefit from a regional structure. However, events such as the ACL conference (held annually in both Manchester and London) could be a good forum for providing additional assistance to all practitioners, for example via a presentation and Q&A session. ACL also has regional groups that might be better placed to disseminate information to members.

## Accreditation

**Consultation question 4: Do you agree that the requirement for Costs Lawyers to be accredited before they can deliver CPD training should be removed? Is the accreditation scheme still valuable as an indicator of quality?**

Under our current regulatory arrangements, Costs Lawyers must be accredited by the CLSB before they can provide training which counts as CPD. This contrasts with other legal professionals and unregulated training companies which can deliver CPD to Costs Lawyers without any such restriction. We proposed the removal of the accreditation requirement but floated the idea of maintaining a voluntary register of Costs Lawyers who were accredited to provide CPD training.

ALCT agreed that the requirement for Costs Lawyers to be accredited before they can deliver CPD training should be removed. However, ALCT felt it would be a welcome addition to the proposals if all Costs Lawyers delivering CPD were required to keep records of evaluation for any CPD session that they delivered as this would encourage the fostering of reflective practice in all learning and development activities by both the learners and the facilitators.

ALCT did not feel that it can be said with any certainty that a voluntary register of CPD providers would be of benefit; such a register may suggest a quality benchmark of the provider that cannot be assured. Further information would be needed regarding how this register would operate in order to form a view on this.

Of the three individual Costs Lawyers that replied to this question, two agreed, with a comment being made that being qualified as a Costs Lawyer should be sufficient to train others. One Costs Lawyer respondent disagreed. They felt that a requirement to provide

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CPD training materials to the CLSB for audit is a good way to assess the quality of the accredited CPD provider, on the presumption that if the material is sub-standard or incorrect, the accreditation is removed. They said that Costs Lawyers continue to struggle with the wider view that Costs Lawyers are generally not “a proper profession” like legal executives or solicitors. They felt the accreditation scheme is therefore necessary to try and instill confidence in the profession.

The SRA agreed that the removal of the requirement could open up the market and lead to a wider variety of training.

### **CLSB decision**

We will remove the requirement for Costs Lawyers to be accredited by the CLSB before training they deliver can count toward minimum CPD attainment. As set out above, the existing requirement for accreditation applies only to Costs Lawyers; that is, it applies only to the group of professionals who are arguably in the best position to train their peers on legal and technical competence in costs law. In our view, mandating additional accreditation for Costs Lawyers to train their colleagues, while not mandating that accreditation for solicitors, barristers or legal executives, undermines rather than supports a positive perception of the Costs Lawyer profession.

Our current intention is to retain a voluntary registration scheme for Costs Lawyers that provide CPD training, but we will discuss the issue further with stakeholders and keep the position under review as the wider changes come into effect.

### **Evidence**

**Consultation question 5: Do you agree that it is disproportionate to ask all Costs Lawyers to submit evidence of their assessment, objective setting and evaluation process every year and that, instead, this evidence should be asked for only as part of the random CPD audit?**

We proposed to continue, as now, to ask Costs Lawyers to report their CPD activities and points they obtain as part of the practising certificate renewal process, but did not

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propose that they would have to submit the evidence in support as a matter of course. ACLT agreed that it would be disproportionate to ask Costs Lawyers to submit this evidence. However, it had concerns that if the current reporting system was maintained that the desired shift in approach to learning and development may not be achieved. Some Costs Lawyers may simply undertake twelve hours of CPD and take the chance that their objective setting will never be audited. However, ACLT noted that there is a secondary stage of reporting (full reporting) which should encourage a change of approach to learning.

One Costs Lawyer respondent agreed with the question. Two Costs Lawyer respondents disagreed, with one stating that they do not think it would be a hardship for anyone to document their assessment, objectives and evaluation of each CPD event and the template document that is being proposed makes this easy to action. They felt it would focus the mind on what is needed and hopefully avoid the last-minute rush that often happens when trying to gain relevant CPD. The other Costs Lawyer respondent stated while it was more onerous to provide the objective-setting, they did not consider it to be disproportionate, subject to the caveat that Costs Lawyers should not be obliged to undertake training on practice management if it was not relevant.

The SRA stated that it has taken the approach of requiring all solicitors to make an annual declaration to confirm that they have met the SRA's continuing competence requirements.

The LSCP agreed with the approach of asking for the evidence as part of the random audit.

### **CLSB decision**

We will not require Costs Lawyers to submit evidence of the assessment, objective setting and evaluation process as part of the practising certificate renewal process. Given responses to other consultation questions, we are concerned that such an approach could drive the misconception that our suggested template is compulsory. We will, however, check Costs Lawyers' records via random audits which will require full

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reporting. It is worth noting that we may need to review this position in due course as a result of the LSB review of ongoing competence.

## Other comments

We received a small number of additional comments on the proposals overall. One Costs Lawyer respondent saw no reason to change the status quo. Another agreed that the approach overall was reasonable, but had the concerns about the template form detailed above in relation to question 3.

A third Costs Lawyer respondent stated that changes to the CPD requirements are another area where there is a disconnect between the CLSB and regulated Costs Lawyers “working at the coal face”. The old approach was able to be accommodated because keeping up to date in connection with one’s own area(s) of professional work could account for twelve CPD points per annum. However, the respondent stated that under the proposals Costs Lawyers are supposed to engage with training that is irrelevant to their own area(s) of professional practice.

Finally, the LSCP recommended that the CLSB undertakes a review after three to four years in order to assess the results of these new rules overall. The LSCP has previously stated that legal services professionals need effective and appropriate interpersonal skills when delivering services to consumers, especially vulnerable consumers. The LSCP was therefore supportive that the regime covered “dealing appropriately with your client and third parties” and felt that it should also include emotional competence as an essential skill for lawyers at all stages of their career.

The LSCP recognised that the use of legal technology in practices is becoming more prevalent and encouraged the CLSB to consider proposals around training in law tech.

## CLSB decision

We wish to reiterate that under these reforms Costs Lawyers only need to undertake CPD in areas relevant to their practice. In fact, the reforms will provide greater flexibility to allow Costs Lawyers to focus on their individual needs. We therefore do not intend to

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amend the rules or guidance in this regard, but it is apparent that we will need to communicate the nature of the changes very clearly and at multiple touchpoints throughout the practising year.

We agree that the skills referred to by the LSCP can form an important part of continuing development, and will include reference to them in the guidance.

Finally, we confirm that it our intention to undertake a review after three to four years in order to assess whether, for example, the outcomes-focused process has sufficiently bedded in to render the twelve-point requirement no longer necessary, and to take into account any new evidence or requirements arising from the LSB's review.

## **Next steps**

Subject to LSB approval of the rules, we intend to introduce the new regime for all CPD carried out from 1 January 2021, which is the beginning of the next CPD year. We will keep Costs Lawyers updated via the usual channels.