
Consultation outcome Practising Rules



6 April 2020

Costs Lawyer Standards Board

CLSB
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Overview

The Costs Lawyer Standards Board (CLSB) regulates Costs Lawyers under the framework established by the Legal Services Act 2007 (LSA). Costs Lawyers must meet certain criteria before they can apply to the CLSB for authorisation to carry out reserved legal activities. Those criteria are set out in our Practising Rules.

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

- Preparing for a digital process of practising certificate applications by removing detailed provisions of the application forms from the Rules.
- Moving to a fairer system of fee reductions for parental leave.
- Updating the list of events that Costs Lawyers are obliged to disclose to the CLSB in line with legislation and regulatory best practice.
- Improving transparency and accountability by setting out a framework for decisions on practising certificates in the Rules.
- Simplifying the Rules and removing the need for a separate practising certificate reinstatement procedure.

We issued a [consultation on the revised Rules](#) on 13 February 2020. We received responses from the Legal Services Consumer Panel (LSCP) and five individual Costs Lawyers. ACL Training (the training arm of the Association of Costs Lawyers) also replied to say it had no comments.

In light of the consultation responses, we intend to implement the revised Practising Rules as proposed, subject to amendments as described in this consultation outcome report. Implementation is subject to prior approval of the Legal Services Board.

Responses to consultation questions

Application for a practising certificate

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

The five Costs Lawyer respondents agreed with this proposal – with one saying that this agreement was provided that the application process was not compromised.

The LSCP supported the move to a digital application process for the next practising year. It felt this will give CLSB flexibility to be more agile and adjust to various Costs Lawyers' circumstances.

CLSB response

We will implement this section of the Rules as drafted, removing administrative details of the application process. We will publish guidance in support of the application process on our website in the form of FAQs, which can be update over time in response to themes identified from practitioner enquiries.

Parental leave

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

The existing Rules specify a reduced fee for a practising certificate application that is received part-way through the practising year. This applies to both newly qualified Costs Lawyers and Costs Lawyers who are returning to their practice (known as applying for “reinstatement” to the register).

The fee dispensation is based on the number of months that a Costs Lawyer practises during the practising year in which they return to work. This has a particular impact in the case of parental leave and means that a Costs Lawyer who returns to work late in a practising year (say, November) will receive a larger fee dispensation than someone who returns to work earlier in the year (say, March) despite those Costs Lawyers being on parental leave for the same overall period of time. We recognised the arbitrary nature of this distinction and wished to ensure equal treatment of (and support for) all Costs Lawyers returning to the profession following parental leave. We therefore proposed to offer a fee dispensation in the practising year following the parental leave, covering the whole period of leave.

We also proposed to remove this fee dispensation from the Rules and embed it instead in the application form and guidance, to give us the flexibility to accommodate different circumstances and ensure we can treat all applicants fairly.

Four of the five respondent Costs Lawyers agreed with the proposal. One Costs Lawyer however felt that fee dispensations are unnecessary given the low level of the practising fee. The LSCP supported the changes.

CLSB response

We believe that it is fair to continue to offer fee reductions. We will implement the proposal as drafted and include details of the fee reductions in the application form and guidance. This will include parental leave and other circumstances such as applications part-way through the year.

Disclosure to the CLSB

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

Costs Lawyers are obliged to disclose certain events (such as convictions) to the CLSB on the grounds that they may affect fitness to practise. The existing Rules contain a list of such events. We proposed to update the list of disclosable events in accordance with

current regulatory best practice. As part of this, we proposed disclosure by Cost Lawyers of any disciplinary proceedings by a regulatory or professional body or any adverse findings of a civil court or tribunal.

The five Costs Lawyer respondents agreed with the proposal.

The LSCP endorsed the proposal to establish a common list of events that need to be disclosed upon applying for a practising certificate. It felt that the revised list was comprehensive, and welcomed that it prompts Costs Lawyers to self-assess and disclose any other matter that might affect their fitness to become or remain a Costs Lawyer. The LSCP agreed with the inclusion of disciplinary proceedings (professional or regulatory, civil court or tribunal) to the list. It commented that these changes will bring CLSB in line with other regulators giving equal levels of protection to consumers.

There were no suggestions as to any other specific matters that should be included in the list, but one Costs Lawyer commented that the Rule should be worded in such a manner as to cover all relevant incidents or those of suspected relevance.

CLSB response

We will implement the list of disclosable events as drafted. The catch-all in Rule 4 that the Costs Lawyer must report to us if they become aware of any other matter that might reasonably be expected to be disclosed in affecting their fitness to become or remain a Costs Lawyer should deal with any circumstances not specified in the list. If it becomes necessary, we can also issue guidance in this area.

Decisions

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

The existing Rules give little steer as to the basis on which an application for a practising certificate will be refused or a condition imposed, beyond providing a discretion if one

of the disclosable events occurs. We therefore proposed a framework for decision-making in Rule 3 that would be more transparent and would assist both decision-makers and applicants.

Four of the five respondent Costs Lawyers agreed with the proposals. One Costs Lawyer felt that a codified system for decision-making risked making the system too rigid, created a possible need for future amendments and was unnecessary.

The LSCP made a comment on the proposed Rule 3.6. This Rule states:

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

The LSCP argued that the CLSB as regulator should specifically consider the consumer interest as well, because the public and consumer interest may on occasion differ.

There were no suggestions as to specific areas for guidance

CLSB response

We will amend Rule 3.6 to specify that the CLSB may remove a condition on a practising certificate only if it is no longer satisfied that any of the grounds in Rule 3.4 for imposing a condition apply. These grounds include that the Costs Lawyer is putting, or is likely to put, at risk the interests of clients, third parties or the public.

Otherwise we will implement the decision-making framework in Rule 3 as drafted. We carefully considered the consultation response suggesting that the framework could be constraining, however we feel this must be balanced against the need for consistency and fairness for applicants. We consider that the framework provides transparency whilst leaving discretion at a broad enough level to allow flexibility. Given that all other respondents supported its implementation, we remain of the view that it is prudent to introduce the framework.

General improvements

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

At a general level the drafting of the new Practising Rules aimed to simplify the provisions, make the Rules more accessible, adopt a more logical order and remove repetition and obsolete references. The changes were also designed to bring the Practising Rules into line with ongoing reforms to our CPD Rules and Disciplinary Rules and Procedures.

The LSCP said that, overall, it welcomed the CLSB's review and believed there are merits in simplifying the Rules. Simplification is likely to enhance accessibility and improve enforcement. The LSCP also welcomed the synergy between this process and the current reforms to the CLSB's CPD Rules and the Disciplinary Rules and Procedures.

Aside from the comment made by the LSCP on Rule 3.6 as described above, there were no specific suggestions for further improvements to the Rules.

CLSB decision

We will proceed with seeking approval to implement the Rules as drafted, subject to the amendment to Rule 3.6 mentioned above.

Next steps

We will now apply to the Legal Services Board for approval of the revised Practising Rules. Subject to the outcome of that application, we intend to implement the new Rules in the first half of 2020 to facilitate the use of a digital practising certificate renewal process in late 2020 (for the 2021 practising year). We will publish guidance in relation to the updated application process (in the form of FAQs) well in advance of the annual renewal period and will notify Costs Lawyers of the changes directly by email.