

Consultation paper
Costs Lawyer Standards Board

Costs Lawyer Competence Test (CLCT)

A new era, a new modern approach

The Costs Lawyer profession has been subject to change over the last few years, for example the legal aid review and new electronic bill of costs. The expectation of further changes and barriers on access has resulted in there being more Costs Lawyers leaving the profession in 2019 onwards, than entering.

There is, and always will be, a need for costs law expertise and we are of the view it is important to ensure Costs Lawyers remain key players in the legal services market and the administration of justice. Now is therefore the right time to review entry into the profession. The aim of the review is to promote access and encourage unregulated costs professionals to enter the regulated community.

The legal remit of the CLSB is to set and maintain standards, this has been achieved in part by setting and overseeing the training requirements of Costs Lawyers before and after qualification. In recent years other approved regulators have achieved a radical revision of their training programmes with a keener focus on competence at the point of entry and much less emphasis on prescribed educational inputs. This proposal likewise sets out a more relevant (regulatory focused) and valid competence assessment at point of entry as a Costs Lawyer.

The SRA, for example, is changing its current six year prescriptive and expensive means of entry into the Solicitors profession by implementing a Solicitors Qualifying Examination (SQE). The SQE will provide a modern and consistent assessment process. To qualify as a Solicitor will no longer require a qualifying law degree, a degree and common professional exam or the legal practice course. Instead, a graduate of any discipline would be eligible to sit Stage 1 SQE (multiple choice).

Under a consultation process, the Solicitor's profession opposed the multiple choice method of examination due to the element of luck involved. It is however now more commonly used and accepted as a definitive test method at a professional level, capable of assessing higher levels of cognitive skills. It is also fairer as it takes away personal opinion on an essay answer.

A candidate successful at Stage 1 SQE would then undertake 2 years on the job training, following which they can apply to take Stage 2 SQE. This involves skills based exercises in advocacy, legal drafting, legal writing, interviewing and advising, research and negotiation.

The Legal Services Board (LSB) has approved the first stage of the SRA's reforms to its qualification procedure. All things considered, change on entry to the Costs Lawyer

profession is now timely. The CLSB therefore proposed a Costs Lawyer Competence Test (“CLCT”) to provide greater accessibility to the profession by removing historical barriers to entry resulting in greater consumer protection. This review aligns with the Strategic Plan of the Legal Services Board published 6 April 2018 to promote the public interest, ensure access and enable innovation, growth and diversity.

Access to the CLCT

Means of access to the CLCT is set out in Annex 1. Rather than the current prescriptive and expensive three year programme of study, this proposal enables aspiring Costs Lawyers to prepare for assessment and develop skills and experience in a range of ways of their choice: work experience, self-study (prescribed text books) or undertaking any training offered by any provider on the various subject matters to be tested. Candidates can also prepare at their own pace. What becomes the main focus is not what an individual has done by way of preparation, but to test competence against standard at the point of qualification.

Targeted regulatory focus of the CLCT

The CLCT will be specifically targeted at the three areas of authorised reserved legal activity (RLA) under the Legal Services Act 2007:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths

The proposed test criteria is set out in Annex 2. This new approach would also specifically address knowledge and understanding in key regulatory areas of practice such as the lay client, vulnerable consumer, insurance, complaints procedures and client monies.

It would also include a new practical test on advocacy skills, a key skill required of a Costs Lawyer other than in legal aid cases. This is considered a required focus as a Costs Lawyer’s authorised rights include *“provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council.”*

Greater consumer protection under regulation

Consumers are better served by having a greater choice of authorised and regulated Costs Lawyer. This assures them the Costs Lawyer conforms to a code of conduct and practising rules, undertakes continuing professional development, has a complaints procedure in place and is insured. Further, they have the right of access to the Legal Ombudsman and CLSB on complaint resolution.

Eight barriers to entry removed by this proposal

1. Onerous academic/education only means of entry into the profession
In line with the approach of the SRA, the previous prescriptive education model which focuses on educational inputs will be removed.

2. Onerous study programme whilst working
Some trainees reported that as the qualification was being driven by ACL Training to level 6, they were finding this too onerous on an earn and learn basis. This also presented a barrier for those with caring responsibilities (e.g. child care).
3. One provider means of entry into the profession
There has historically only been one provider of the three year Costs Lawyer qualification which has always been a risk, a risk which materialised in 2017. What is proposed would address this risk.
4. Cost of entry into the profession
The CLSB has been concerned over recent years about the significant year on year rise in the annual course fee charged by ACL Training. Lack of competition was not helpful in this regard and the CLSB found itself unable to control this barrier.
5. Inadequate historical exemptions for the legally qualified
The CLSB long held the view that ACL Training never provided enough exemptions for those who were Solicitors, Barristers, C.ILEX or had a law degree.
6. Experienced Costs Draftsmen not seeking to enter the profession
We are aware the ACL concedes many experienced Costs Draftsmen are highly knowledgeable and competent. The three years qualification was a likely barrier to their seeking to achieve Costs Lawyer status.
7. Minimum age requirement of 18
At the request of ACL Training, rules were changed to increase the age from 16 to 18 due to the legal implications on the education of a minor.
8. Minimum level of education criteria
This proposal acknowledges that a school environment may not have been a positive experience, with a positive outcome for all. It seeks to offer subsequent opportunity to a professional career in the law.

Greater consumer protection safeguards

CLSB rules would be revised to state that a new Costs Lawyer who qualified under Table 3 of Annex 1 would not be allowed to practice for two years post qualification, without the supervision of a Costs Lawyer.

Increased transparency

As with the SRA revised approach, the CLSB would seek to have a greater degree of control over the provision of the CLCT. This would enable the CLSB to offer greater transparency on the publication of outcomes i.e. the pass mark, number of candidates who sat the assessment and pass rate and equality and diversity data.

Ensuring standards

The pass mark would be set by reference to contemporary and respected standard setting processes. Standard setting is a process whereby a mark or score is determined to distinguish between a competent candidate and non-competent candidate. It is the process by which a minimum pass mark is reached. There is a range of standard setting methods which are used in both written and practical skills based assessments of professional competences. The CLSB would work with the successful assessment provider to adopt the appropriate standard setting method for the two stage CLCT.

Ensuring quality

The CLSB would ensure the CLCT was valid, reliable, rigorous and quality assured. It would subject the provider and CLCT to annual independent audit.

Potential providers

The CLSB would seek to approach four potential providers for the CLCT. Criteria the CLSB would be looking to identify in a provider would include, inter alia:

- Experience in the delivery/assessment of a legal qualification(s).
- Long term financial security.
- No conflict of interest.
- Proven business acumen including marketing skills.
- A desire to foster a good working relationship with the CLSB to achieve the aims and objectives of the CLSB on standards and competencies.

A provider would be required to enter into a written agreement with the CLSB which would include terms on price control, reporting, auditing and conduct.

The future

This proposal should be considered with an open mind and a willingness to embrace change. Modernisation is required to ensure the profession continues into the future, thus ensuring consumer protection in a key area of legal practice.

How to respond to the consultation

If you wish to respond, it would assist if you would address the following questions:

Q1: Do you agree with the principles of the proposal?

Q1: Do you agree with the access criteria (Annex 1)?

Q2: Do you agree with the standard criteria (Annex 2)?

This consultation will be open for a period of eight working weeks. Responses must be received by the CLSB no later than midnight on Friday 22 June 2018 to be considered.

Please send your response by:

Email: enquiries@clsb.info

Post: CLSB, Centurion House, 129 Deansgate, Manchester M3 3WR

Dated: 30 April 2018

Annex 1

Costs Lawyer Competence Test (CLCT) Access

Suitability

The CLSB would continue to ensure that character and suitability requirements are met by a candidate seeking to take the Costs Lawyer Competence Test (CLCT).

Work-based experience in costs law and practice (WBE)

The minimum years of WBE would not have to be achieved consecutively. Under this proposal a career break would not be a barrier to entry.

Would WBE be tested?

No, as the SRA concluded from research and experience in other sectors, it is too difficult to assess WBE on a consistent basis. This would instead be tested through the CLCT.

Exemptions

Where the CLSB is of the view knowledge and skills have been tested to an adequate standard under another legal qualification, an exemption has been permitted. Only those exemptions stated would be permitted.

Pace of evidencing standard

Each part (if not exempt) need not be passed at the same time or in order.

Table 1: Access by legal qualification

Proof of qualification would be required before exemptions are applied and access to the CLCT permitted.

Status	Exemption(s)	CLCT
Barrister (having completed the Bar Professional Training course)	Part 1(a) Part 2	Immediate access to: Part 1(b)
Solicitor (having achieved that status through current prescribed methods of entry by SRA)	Part 1(a) Part 2	Immediate access to: Part 1(b)
C.llex (having achieved chartered status)	Part 1(a)	Immediate access to: Part 1(b) Part 2
Law degree	Part 1(a)	Immediate access to: Part 1(b) Part 2

Table 2: Access by historical experience as a Costs Draftsman/Law Costs Draftsman

A fully completed application form would be required. This form will seek details of WBE and contact details for verification before access to the CLCT is permitted.

Work-based experience	CLCT
5 + years WBE in costs law and practice	Immediate access to: Part 1(a) Part 1(b) Part 2

Table 3: Access new to the Costs Lawyer profession

A fully completed application form would be required. The form will seek details of WBE, CPD, supervision and contact details for verification before access to the CLCT is permitted.

Work-based experience	CLCT
(i) Minimum of 3 years WBE in costs law and practice supervised by a regulated Costs Lawyer; and (ii) 15 CPD points for WBE year	Immediate access to: Part 1(a) Part 1(b) Part 2

Annex 2

Costs Lawyer Competence Test (CLCT) Standard

Objective of the CLCT

To assess a candidate's ability to demonstrate an acceptable standard of knowledge and skill applicable to the three reserved legal activities which a Costs Lawyer authorised by the CLSB under the Legal Services Act 2007 can undertake, namely:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths

Part 1: Knowledge

Whilst there would be some cross over between knowledge in parts 1 and 2, this would be mainly tested by way of multiple choice testing (MCT), an effective and inexpensive method of assessment commonly used now in professional education (and adopted by the SRA in the SQE). It will use the single best-answer method and will assess core knowledge. MCT removes the persona judgement inevitably present in assessing essays and coursework and avoids challenges (re-marks) on the grounds of academic judgement. It is proposed that the areas set out in the list below be assessed under 2 assessments.

Part 1(a): 3 hour MCT

Assess general knowledge of the legal system of England & Wales, general understanding of core principle of contract law and core principles of tort.

Part 1(b): 3 hour MCT

Assess knowledge of costs law and practice and the reserved legal activity of the administration of oaths.

Part 2: Practical Test (PT)

The focus of this oral practical assessment will be on the competency of professional legal skills including advocacy skills. It would be for the provider of the CLCT to design a practical advocacy test that would assess the knowledge and skills identified in the tables below.

Ref		Assessment by MCT	Assessment by PT
1	THE LEGAL SYSTEM OF ENGLAND & WALES <i>Regulated reserved legal activity targeted:</i> <ul style="list-style-type: none">• <i>The exercise of a right of audience</i>• <i>The conduct of litigation</i>• <i>The administration of oaths</i>		

	Knowledge: The institutions, structure and rational of the legal system of England & Wales as well as its relation to the legal systems of the EU		
1 (i)	Sources of law e.g. legislation, common law, European law and European Convention on Human Rights	Part 1(a)	-
1 (ii)	Role of Parliament e.g. legislative process	Part 1(a)	-
1 (iii)	Role of the judiciary e.g. history & background, judicial independence, statutory interpretation and doctrine of precedent	Part 1(a)	-
1 (iv)	Civil court structure and function	Part 1(a)	-
1 (v)	Criminal court structure and function	Part 1(a)	-
1 (vi)	Court hierarchy and tribunals	Part 1(a)	-
1 (vii)	European law e.g. history of the EU, sources of European law and Parliamentary supremacy	Part 1(a)	-
1 (viii)	Human rights e.g. ECHR and Human Rights Act 1998	Part 1(a)	-
2	LAW OF CONTRACT <i>Regulated reserved legal activity targeted:</i> <ul style="list-style-type: none"> • <i>The conduct of litigation</i> Knowledge: General principles on the law of contract		
2 (i)	Nature of contracts	Part 1(a)	-
2 (ii)	Formation of contract	Part 1(a)	-
2 (iii)	Privity of contract	Part 1(a)	-
2 (iv)	Express/implied terms	Part 1(a)	-
2 (v)	Exemption clauses and limitation of liability	Part 1(a)	-
2 (vi)	Defences e.g. mistake, misrepresentation, duress or undue influence, unfair contract term	Part 1(a)	-
2 (vii)	Termination	Part 1(a)	-
2 (viii)	Remedies	Part 1(a)	-
3	LAW OF TORT <i>Regulated reserved legal activity targeted:</i> <ul style="list-style-type: none"> • <i>The conduct of litigation</i> Knowledge: General principles on the law of tort		
3 (i)	Core principles e.g. negligence, nuisance, trespass to land, trespass to person	Part 1(a)	-
3 (ii)	Applicable civil procedure rules	Part 1(a)	-
3 (iii)	Joint and several tortfeasors	Part 1(a)	-
3 (iv)	Vicarious liability	Part 1(a)	-
3 (v)	Pre-action considerations	Part 1(a)	-
3 (vi)	Commencing procedure, pleading and service	Part 1(a)	-
3 (viii)	Allocation of tracks	Part 1(a)	-
3 (ix)	Part 36 offers and payments	Part 1(a)	-
3 (x)	Interim applications	Part 1(a)	-
3 (xi)	Defences including contributory negligence	Part 1(a)	-
3 (xii)	Remedies	Part 1(a)	-
4	PROFESSIONAL ETHICS & CONDUCT		

	<p><i>Regulated reserved legal activity targeted:</i></p> <ul style="list-style-type: none"> • <i>The exercise of a right of audience</i> • <i>The conduct of litigation</i> • <i>The administration of oaths</i> <p>Knowledge: The fundamental requirement to act with honesty, integrity and in accordance with recognised moral principles within the legal profession</p>		
4 (i)	Professional standards, duties to clients, courts and others of a Costs Lawyer e.g. code of conduct, practising rules	Part 1(b)	Part 2
4 (ii)	Handling client monies	Part 1(b)	-
4 (iii)	Reserved legal activities and authorised rights of a Costs Lawyer with a practising certificate	Part 1(b)	Part 2
4 (iv)	Role of the approved regulators e.g. CLSB, SRA, BSB	Part 1(b)	-
4 (v)	Costs Lawyer statement of rights e.g. which courts they can appear in and when	Part 1(b)	Part 2
4 (vi)	Conflict of interest and confidentiality	Part 1(b)	-
4 (vii)	Complaint procedure requirements	Part 1(b)	-
4 (viii)	Insurance requirements	Part 1(b)	-
4 (ix)	The vulnerable consumer	Part 1(b)	-
4 (x)	The professional client (solicitor) and lay client	Part 1(b)	-
4 (xi)	Role of the representative body (ACL)	Part 1(b)	-
4 (xii)	Role of the Legal Services Board	Part 1(b)	-
4 (xiii)	Role of the Legal Ombudsman	Part 1(b)	-
4 (xiv)	Accredited Costs Lawyers (for purposes of CPD)	Part 1(b)	-
5	<p>LEGAL COSTS (CIVIL PROCEDURE)</p> <p><i>Regulated reserved legal activity targeted:</i></p> <ul style="list-style-type: none"> • <i>The exercise of a right of audience</i> • <i>The conduct of litigation</i> <p>Knowledge: The civil court process and prevailing law in relation to legal costs</p>		
5 (i)	Case law and precedent	Part 1(b)	Part 2
5 (ii)	Tracks e.g. small, fast and multi	Part 1(b)	-
5 (iii)	Protocols e.g. pre-action and cases not covered by protocols	Part 1(b)	-
5 (iv)	Documents e.g. bill of costs, points of dispute, written submissions, skeleton arguments, costs budgets, statements of costs	Part 1(b)	Part 2
5 (v)	Funding e.g. conditional fee arrangements, collective conditional fee arrangements, insurance policies (before or after the event), damages based agreements.	Part 1(b)	-
5 (vi)	Costs orders e.g. interim costs, wasted costs, security for costs, costs (in any event), costs in the case/application, costs reserved, costs thrown away, costs of and caused by, costs here and below, no order for costs and each party to pay their own costs.	Part 1(b)	Part 2
5 (vii)	What can be claimed e.g. fees and charges of the solicitor, disbursements (including Councils fees), witness	Part 1(b)	Part 2

	allowances, non-professional witness fees, VAT, Lawyers “success fees” and after the event insurance premium.		
5 (viii)	The indemnity principle and exceptions	Part 1(b)	-
5 (ix)	Fixed costs and fees	Part 1(b)	-
5 (x)	Costs limits	Part 1(b)	-
5 (xi)	Witness statements	Part 1(b)	Part 2
5 (xii)	Settlement: Offers to settle, acceptance of an offer, rejection of an offer and discontinued claims	Part 1(b)	-
5 (xiii)	Qualified one-way costs-shifting	Part 1(b)	-
5 (xiv)	Who can claim costs e.g. in-house lawyers and litigants in person	Part 1(b)	Part 2
5 (xv)	Reasonableness of costs	Part 1(b)	Part 2
5 (xvi)	Basis of costs assessment (standard/indemnity)	Part 1(b)	Part 2
5 (xvii)	Proportionality e.g. old test and new test	Part 1(b)	-
5 (xviii)	Costs estimates & budgets	Part 1(b)	-
5 (xix)	Assessments e.g. summary, detailed and provisional	Part 1(b)	-
5 (xx)	Inter parties costs, solicitor-client costs	Part 1(b)	-
5 (xxi)	Costs in third party claims	Part 1(b)	-
5 (xxii)	Costs against non-parties	Part 1(b)	-
5 (xxiii)	Filing timescales and penalties	Part 1(b)	-
5 (xxiv)	ADR and mediation	Part 1(b)	-
5 (xv)	Appeal procedure	Part 1(b)	-
6	LEGAL COSTS (LEGAL AID) Knowledge: The operation of the legal aid process and prevailing law in relation to legal aid costs		
6 (i)	Role of Legal Aid Agency	Part 1(b)	-
6 (ii)	Role of National Taxing Team	Part 1(b)	-
6 (iii)	Who is entitled to legal aid	Part 1(b)	-
6 (iv)	What can be claimed	Part 1(b)	-
6 (v)	Statutory charge	Part 1(b)	-
6 (vi)	Statute, case law and precedent	Part 1(b)	-
6 (vii)	Process including documents, contract, detailed assessments, timescales, penalties	Part 1(b)	-
6 (viii)	Costs protection for client	Part 1(b)	-
7	ADMINISTRATION OF OATHS <i>Regulated reserved legal activity targeted:</i> <ul style="list-style-type: none"> <i>The administration of oaths</i> Knowledge: A clear understanding of what an authorised Costs Lawyer can and cannot do under this reserved legal activity		
7 (i)	What does this right afford e.g. oaths and affidavits	Part 1(b)	-
7 (ii)	Prevailing law e.g. The Commissioners for Oaths Act 1889	Part 1(b)	-
7 (iii)	How to execute this right	Part 1(b)	-
7 (iv)	What this right does not permit	Part 1(b)	-
8	ADVOCACY <i>Regulated reserved legal activity targeted</i>		

	<ul style="list-style-type: none"> • <i>The exercise of a right of audience</i> • <i>The conduct of litigation</i> Knowledge & skill: The court process, preparing and applying the facts and current law in the presentation of a case before the Court in the best interests of the client		
8 (i)	Court etiquette	-	Part 2
8 (ii)	Preparation, strategy & objectives	-	Part 2
8 (iii)	Applying law to the facts	Part 1(b)	Part 2
8 (iv)	Questioning/leading questions	-	Part 2
8 (v)	Witness handling	-	Part 2
8 (vi)	When to challenge/cross examination	-	Part 2
8 (vii)	Summation	-	Part 2
8 (viii)	Clear and accurate presentation	-	Part 2

Learning methods for both knowledge and skill testing

These are non-prescriptive, a candidate would be free to choose how they prepare.

- Work based experience in costs law and practice.
- Prescribed text book learning (CLCT provider to set out which books the CLCT is based around).
- Costs Lawyer Handbook (code of conduct, practising rules, guidance notes)
- Learning courses (optional).