



## The Costs Lawyer Standards Board, setting and maintaining standards in the profession

### Newsletter 11: 28 April 2018

#### **Fact not fiction**

In the March/April 2018 edition of the Costs Lawyer publication, Kirsty Allison reported incorrectly that *“In November 2017, the Costs Lawyer Standards Board (CLSB) issued a newsletter, sent to all Costs Lawyers, which removed the only route to qualification. Without any discussion with ACLT on the future viability, and doors were closed on the current course.”*

Firstly, the CLSB did not *“remove”* the route to qualification. Our newsletter dated 1 November 2017 was clear, it stated *“the CLSB has taken the difficult decision to **suspend** any further intake onto the current three year Costs Lawyer qualification”*.

Secondly, a discussion had taken place between the ACL Chair, CLSB Chair and CEO.

Historically, there has been up to 300 Trainee Costs Lawyers on the course at any given time. In 2016 only 22 trainees enrolled and in 2017 intake dropped to 20. During our discussion with the ACL Chair we were advised these numbers were below the minimum ACL Training required for the course to be financially viable. This knowledge left the CLSB unable to accredit ACL Training to take on any new trainees in 2018 as to do so would have been negligent in the circumstances.

Once again we clarify that *“the ACL Chair has given the CLSB a verbal assurance that ACL Training is in a financial position to honour its contractual obligations to trainees currently enrolled on academic years 1, 2 and 3. The CLSB is grateful for that assurance.”* We have been assured by the ACL Chair that funds have been ring-fenced to deliver on this assurance.

It is disappointing that we have had no communication from ACL Training on proposals to work out the problems they face. The CLSB has however been working on possible solutions for the profession.

Firstly, we investigated whether the profession should apply to join the government apprenticeship scheme. For a number of reasons, we concluded this was not a viable option. The CLSB did however write to ACL Training saying that if they wished to look further into this, we would provide them with all information we had gathered to date. We have heard nothing on that offer.

Secondly, we have continued our work on a Costs Lawyer Competence Test (“CLCT”).

## **The future**

It is the role of the CLSB to protect the consumer of Costs Lawyer services, it is not within the legal remit of the CLSB to promote the profession. Promotion of the profession is the role of the ACL.

The CLSB monitors movement in the profession and records that an average of 40 Costs Lawyers leave the profession each year for various reasons. Therefore, from 2019 there will be more Costs Lawyer leaving the profession each year than joining.

The CLSB has been watching progress of a new Solicitors Qualifying Examination with interest. It is a radical change of approach on entry to the Solicitor's profession which would not even require a law degree as a means of access. As the SRA say, times have changed. This is a new era and we all have to adapt and change accordingly. As a result, a radical change of approach has been worked on which would move the focus from the previous prescriptive educational model means of entry to a regulatory focussed approach under the CLCT. We hope to consult on this in the next few days.

If the CLCT is approved by the LSB, it would be imperative to its success that the right provider be found. The CLSB has therefore identified key standard requirements of a provider, which would be set out under a tender process. The successful tenderer would be subject to strict contractual terms to ensure best possibility of success.

## **The profession: Working in a Solicitors practice**

An analysis of the profession at the end of 2017 identified a 5.1% increase in Costs Lawyers reporting they work for a costs law firm (whether unregulated, regulated or licensed as an ABS). This went some way to reverse the 11.8% decline recorded over the two years 2012 and 2013. Nevertheless, since our stats began in 2011 we have recorded an 11.3% overall increase in Costs Lawyers working for a firm of Solicitors.

## **The profession: Sole practitioners**

In 2017, sole practitioners made up 14.5% of the regulated Costs Lawyer population.

## **Male/female Costs Lawyers**

Since 2012, we have recorded a year on year increase in female Costs Lawyers with an overall increase of 6.6%. At the end of 2017, female Costs Lawyers made up 41.4% of the regulated Costs Lawyer population.

## **General Data Protection Regulations ("GDPR")**

GDPR will become effective on 25 May 2018. A Costs Lawyer who holds data, defined as *"any information related to a natural person or Data Subject, that can be used to directly or indirectly identify the person"* should familiarise themselves with the requirements to ensure compliance. The website of the Information Commission Officer is the best source of information on compliance, and they have published a 12 Step document which is very helpful and can be accessed at:

<https://ico.org.uk/media/1624219/preparing-for-the-gdpr-12-steps.pdf>

## **Vulnerable consumers**

Our current guidance on vulnerable consumers can be located on the CLSB website under the Costs Lawyer Handbook. A vulnerable consumer extends beyond that of a person with a disability. Consumers of legal services are often dealing with life-changing events and will feel vulnerable as a result. Some, such as litigants in person, will have limited knowledge of the legal situation they find themselves in. It is important for a Costs Lawyer to consider and to reduce client vulnerability. Circumstances in which a consumer might be vulnerable are: age, low income, inexperience, low literacy, learning disabilities, cultural barriers, physical disabilities, mental health issues, English as a second language, health problems, location, being a carer, lack of internet access, leaving care, lone parent, bereavement, loss of income, relationship breakdown, living alone, release from prison.

Examples of good practice in addressing the needs of a vulnerable consumer include:

- Consider communication needs.
- Ensure easy access to buildings.
- Be aware that a client with a learning difficulty might find everyday tasks difficult e.g. filling in forms, concentrating for long periods and remembering or explaining things. In such circumstances take simple steps such as allowing extra time for meetings, finding a quiet space to meet without noise or distractions and explaining things using clear and simple language.
- Be aware that short-term characteristics causing vulnerability could relate to a sudden change in circumstances e.g. loss of employment or income, bereavement, relationship breakdown or caring responsibilities. These situations are often strongly linked to the legal services market. It is therefore important to help consumers overcome a sense of powerlessness and enable them to access legal services with confidence.

Here are some examples of what to consider:

- Are standard communications which are sent to vulnerable consumers appropriate?
- Does the court need to be notified of any special needs?
- Have you been trained to recognise and respond to the needs of vulnerable consumers?
- Are websites and other consumer-facing communications accessible?
- Are feedback mechanisms in place to check whether the needs of vulnerable consumers are being met?
- Is there a process for assessing how effectively the needs of vulnerable consumers are addressed?

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