
Approach to consultation



20 July 2022

Costs Lawyer Standards Board

CLSB
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Purpose

1. This document describes how, when and why the CLSB consults with its stakeholders about proposed changes to its regulatory rules or policy approach.
2. The document aims to help interested parties understand our consultation processes and how they can engage with us so their views are taken into account. This document also helps ensure that the CLSB's approach to consultation is consistent, fair and transparent.
3. The term "consultation" can refer to a wide variety of activities, from having informal discussions and taking soundings, to convening advisory panels and interest groups, to a formal written process addressing the public at large. The CLSB undertakes all these activities from time to time, depending on what is relevant and proportionate for a particular issue.
4. However, the focus of this document is on formal consultation, whereby a proposal is set out in a detailed consultation document and responses are sought from any interested parties within a specified timeframe.

Why we consult

5. The CLSB's overarching purpose is to promote the regulatory objectives in the Legal Services Act 2007 through the regulation of Costs Lawyers. The regulatory objectives include aims such as protecting and promoting the public interest, improving access to justice, and maintaining adherence to professional principles.
6. In promoting the regulatory objectives, our regulatory activities must also be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. This means that, in order to regulate effectively, we need to gather robust evidence of the problem we are trying to solve, understand the impact that our intervention will have on affected parties, and consider how best to maximise positive impacts and minimise negative ones. In order to do that, we

need to clearly explain what we propose to do and why, to enable people to give us feedback and share their views. This is primarily done through consultation.

7. We recognise that our regulatory rules and interventions can have an impact on a range of individuals and organisations, each with their own interests and needs. Consultation allows us to better understand and factor into our decision-making the views of practitioners, the knowledge of experts, the experience of minority groups, and the interests of consumers and citizens. This helps us identify unintended consequences of our decisions, assess risk, gain exposure to ideas and benefit from best practice.
8. The guiding principle that we apply when consulting is that we will always remain open-minded. Through consultation, we are looking for ways to improve our proposals so that they further the regulatory objectives in the most effective way.

How we consult

9. We aim to take a tailored and considered approach to each formal consultation we carry out; there is no single consultation methodology that will be appropriate in every case.
10. Factors that affect our approach to consultation on a particular proposal include:
 - the complexity of the issues and evidence;
 - the likely extent (depth and breadth) of the impact of the proposal;
 - the nature of the proposal, including whether it involves a significant policy shift or more technical changes;
 - whether stakeholders will need to take positive action to implement the proposal;
 - the scope for discretion, including whether the proposal is tied to external factors such as legislation;
 - the extent of informal consultation already undertaken, particularly with those who are likely to be impacted.

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11. While there is a need for flexibility, we will usually follow the principles below when carrying out formal consultation, unless the circumstances make it necessary to depart from them (for example, because a change is critically urgent).
- (i) We will publish a written document setting out, in plain language, the changes we propose to make and why. We will consider whether it is necessary to publish different consultation documents for different audiences.
 - (ii) We will summarise or cross-refer to the key evidence upon which we rely, so that consultees can evaluate our reasoning.
 - (iii) We will explain how we think our proposal will impact upon:
 - the regulatory objectives;
 - consumers; and
 - equality and diversity,and seek feedback on our understanding.
 - (iv) We will allow a proportionate timeframe for responding to the consultation, taking into account the nature and impact of the proposal, in line with [Cabinet Office guidance](#). In most cases, we will allow at least four weeks for consultees to provide a written response, with longer periods of up to 12 weeks for more complex proposals. We will be mindful of holidays in setting consultation deadlines.
 - (v) We will consider requests for extensions of time on a case by case basis and will not impose a blanket prohibition on extensions.
 - (vi) We will be mindful of other CLSB and sector consultations – as well as other activities for which we are seeking stakeholder involvement – when setting consultation timetables.
 - (vii) We will welcome responses by any method, including verbal and email responses, and will make reasonable adjustments for consultees with disabilities.

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- (viii) We will publish consultation documents on an easily identifiable page of the CLSB website in a format that meets current accessibility standards. We will use annexures and hyperlinks to keep consultation documents as simple and clear as possible.
 - (ix) We will make our regulated community and key stakeholders aware of consultations by direct email, and will promote consultations through our social media channels, newsletters, website and sector press.
 - (x) We will consider on a case by case basis whether and how consultations should be promoted to particular individuals or interest groups, for example where there might be a differential impact.
 - (xi) We will consider on a case by case basis whether additional communications or events would be beneficial to supplement the consultation, for example to reach a more varied audience or encourage responses to key questions. This could include unilateral communications such as videos or podcasts, or multilateral communications such as webinars, roundtables or workshops. Proportionality will be a key consideration when deciding whether to supplement a consultation in this way.

When we consult

- 12. We will always undertake formal consultation in relation to:
 - setting the annual practising fee;
 - making significant changes to our regulatory arrangements;
 - making minor changes to our regulatory arrangements that necessitate Costs Lawyers taking positive action within a short timeframe.
- 13. We will consider whether formal consultation would be useful and proportionate in relation to:
 - making other minor changes to our regulatory arrangements, particularly those that could have a disproportionate impact on a particular group;
 - publishing new or amended regulatory guidance or policy statements;
 - emerging policy positions or milestones in policy development;

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- any other proposal upon which formal consultation might be warranted to ensure a fair and transparent process of engagement.

Who we consult

14. Formal consultation is a particularly important part of stakeholder engagement because it is universal and transparent; it gives everyone an opportunity to provide feedback on the same issues and questions, and hear what others have to say. For this reason, we will always open our consultations to the public at large, even if we target communications at impacted people or groups.
15. We will send all CLSB consultations directly by email to regulated Costs Lawyers.
16. We will also send bespoke communications about consultations to the following consultees on a case by case basis, where they might have feedback, evidence or expertise that could contribute to the consultation (even if they may not be directly impacted by our proposal):
 - Association of Costs Lawyers (ACL);
 - ACL Training;
 - trainee Costs Lawyers;
 - Legal Services Board;
 - Legal Services Consumer Panel;
 - consumer and other third sector bodies, such as Citizens' Advice;
 - Solicitors Regulation Authority, which regulates the firms in which many Costs Lawyers work;
 - other legal services regulators;
 - groups representing the professionals who instruct Costs Lawyers, such as the Litigation Section of The Law Society;
 - public bodies and government departments, such as the Ministry of Justice, HM Courts and Tribunals Service or the Legal Aid Agency;
 - judicial bodies, such as the Senior Courts Costs Office;
 - legal academics and commentators;
 - legal training providers.

How we take feedback into account

17. The most important part of the consultation process is determining how best to take account of feedback from respondents to improve the proposals set out in the consultation.
18. The CLSB reviews every individual consultation response as a standalone document, to identify implicit themes (such as overall support for or objection to the proposals) and to capture any feedback that is not directly responsive to the consultation questions. A question-by-question compendium is also produced, collating all respondents' answers to each consultation question.
19. We then consider how to act upon each item of feedback, taking into account:
 - whether the feedback is supported by our own evidence or evidence supplied by the respondent;
 - the likely impact of actioning the feedback on (where relevant) the regulated community, the regulatory objectives, consumers, and equality and diversity;
 - any complementary or contradictory feedback from other respondents (although being mindful to give equal weight to all feedback, for example by recognising that one group's views should not be given more weight just because more people from that group responded to the consultation).
20. We could act on feedback by, for example, making changes to the text of a proposed publication, making a commitment to do something in the future (like reviewing changes after a certain period), or taking action in a different area of our work. We recognise that, in some cases, making changes in response to feedback will necessitate further formal consultation.
21. We set out our response to consultations in a consultation outcome report, which is published on our website and communicated through our social media channels,

newsletters and the sector press.¹ In the report, we summarise the feedback received from consultees and explain how we have taken it into account. This could involve explaining how we have acted on the feedback, or explaining why we chose not to act. Either way, every item of feedback is carefully considered and addressed with equal weight.

22. We aim to publish consultation outcome reports within 12 weeks of the consultation closing. We often publish these sooner, but in some cases it might take longer, for example if there is a very high volume of responses or if we intend to make changes that require the approval of the CLSB board.

¹ By way of exception, we do not publish a consultation outcome report in response to the annual practising fee consultation. This is because the consultation responses, along with a description of how we have taken them into account, are summarised in our application to the Legal Services Board (LSB) for approval of the fee under section 51 of the Legal Services Act 2007. Our application is [published on the LSB's website](#).