

GUIDANCE NOTE: For Client/Potential Client of a Costs Lawyer

Regulator: Costs Lawyer Standards Board

Issued: 11 October 2016

This guidance note has been drafted to assist a Costs Lawyer client or potential client in understanding what a Costs Lawyer is, what services they offer and what you, as a client, can expect when you instruct a Costs Lawyer. Reference to a Costs Lawyer herein is reference to a Costs Lawyer authorised and regulated by the Costs Lawyer Standards Board (CLSB).

Why is a Costs Lawyer needed?

Costs Lawyers are experts in the area of legal costs law and practice. Legal costs can be expensive and the law on legal costs is complex and ever changing due to case law and changes in the law, hence the need for specialist advice and assistance.

Costs Lawyers find themselves instructed either before, during or after a civil court case. They are instructed occasionally in criminal cases where costs are payable by the prosecution, as well as in matters relating to solicitor and own client costs. They can advise on costs likely to be incurred (estimated costs) or prepare details of costs incurred. They can also be instructed to advise on costs payable and challenge those costs.

Legal cases can take a long time to conclude, especially if they require a court hearing. Generally speaking, the longer a case goes on the more likely the legal costs will be increasing. Costs quite often end up being more than the value of the matter in question, and if a party has lost their case, they may be liable for all or part of the other side's costs. In such circumstances, the costs of the successful party will be subject to negotiation or assessment by the courts. Either party may instruct a Costs Lawyer in relation to pursuing or defending those costs.

In multi-track cases (those claims over £25k) commenced on or after 1 April 2013 in either the County Court or High Court, all parties (except litigants in person) are required to file and exchange budgets setting out their costs to date and estimated costs for each stage in the proceedings unless the court orders otherwise. This is known as costs budgeting or costs management and those budgets may have to be revised following significant developments during the litigation and court approved or agreed with the other side.

What is a Costs Lawyer?

A Costs Lawyer is a qualified and regulated legal costs expert who undertakes annual continuing professional development under practising rules issued by the CLSB.

The CLSB is the professions regulator under the Legal Services Act 2007 (LSA) and defines "legal costs" as being *"the remuneration of legal representatives (e.g. solicitors and barristers) which are controlled by statute or common law."*

Before instructing a Costs Lawyer we advise a potential client to check they are authorised and regulated. Costs Lawyers whose name appears on the Authorised Costs Lawyer register available for inspection on the CLSB website at www.clsb.info hold a current practising certificate issued by the CLSB. They are therefore regulated by the CLSB and are authorised by them under the LSA to conduct litigation, exercise a right of audience and administer oaths.

Further, being authorised and regulated by the CLSB indicates the Costs Lawyer:

- Is qualified as a Costs Lawyer (3 year qualification).
- Practices in adherence to a Code of Conduct.
- Undertakes continuing professional development (12 CPD points per year).
- Has in place a complaints handling procedure.
- Has in place a minimum level of professional indemnity insurance (£100k).

What are authorised rights in more detail?

To provide greater clarity on just what the three authorised rights set out above mean, the CLSB agreed the following with the Legal Services Board (LSB), the oversight regulator of all legal regulators under the LSA, in March 2014:

As a Costs Lawyer you are a regulated person under the LSA and are authorised to carry on the following reserved legal activities:

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

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 where:

- *the proceedings are at first instance; or*
- *the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs; or*
- *the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or*
- *the court or tribunal grants permission for you to conduct proceedings or to represent a client (or both).*

Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:

- *relate solely to costs; or*
- *when they relate to other issues, solely those issues that are not in dispute.*

A matter 'relates to costs' if it relates to payments for legal representation, including payments in respect of pro bono representation under s194 of the LSA and/or to payments

made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages. For the avoidance of doubt, this includes:

- *Costs between opposing parties including costs management and budgeting.*
- *Solicitor and client costs but not if and to the extent that issues of negligence arise when a Lawyer competent to deal with allegations of negligence ought to be instructed instead.*
- *Legal aid, criminal costs, wasted costs or costs against third parties.*

Further, you may administer any oath.

What does a Costs Lawyers do?

Areas of legal costs in which a Costs Lawyer may become involved are:

- Costs payable “between the parties.”
- Solicitor and own client costs.
- Legal aid costs.

The following legal services can be undertaken by a Costs Lawyer:

- Advice on the charging and recovery of legal costs and disbursements (fees paid to an expert for example).
- Advice on litigation funding.
- Prepare costs budgets.
- Prepare discussion documents to inform the court on budget issues.
- Prepare schedules of costs.
- Prepare bill of costs for provisional/detailed assessment by the court.
- Prepare points of dispute on a bill of costs and replies.
- Conduct negotiations in an attempt to settle costs without the need for a court hearing.
- Attend court as an advocate on detailed assessment hearings
- Arrange and attends Alternative Dispute Resolution (ADR/mediation).
- Act as an expert witness on legal costs matters.
- The administration of oaths.

Some Costs Lawyers are also trained mediators.

Can a Costs Lawyer handle client monies?

No, Principle 3.6 of the Costs Lawyer Code of Conduct states a Costs Lawyer “*must not accept client money save for disbursements and payment of your proper professional fees.*”

An invoice for professional fees has to therefore be raised by a Costs Lawyer before payment can be received.

If a Costs Lawyer is employed by a firm of Solicitors regulated by the Solicitors Regulation Authority (SRA), then the Costs Lawyer can receive client monies other than invoiced professional fees and disbursements under SRA regulation of that law firm.

Where do Costs Lawyers work?

A Costs Lawyer may work for themselves (sole practitioner) for a costs law firm (a firm which specialises in costs law and practice) or for a firm of Solicitors.

Who can instruct a Costs Lawyer?

Costs Lawyers receive instructions from Solicitors (informed client) and litigants in person (lay client).

What can a client expect from their Costs Lawyer?

Costs Lawyers authorised and regulated by the CLSB adhere to a Costs Lawyer Code of Conduct and Costs Lawyer Practising Rules. A client will receive a client care letter which will set out information including: the basis of the instruction, who will carry out the work, fees, the right to terminate instructions and complaint procedure arrangements. It is important a client receives and understands the contents of that client care letter as it is in effect the contractual terms between them and their Costs Lawyer.

What is a Law Costs Draftsman or Costs Draftsman?

A Law Costs Draftsman or Costs Draftsman is someone who also deals with legal costs issues but may be without qualification, experience or regulation. For that reason, anyone considering instructing a costs person should first check their authorised and regulated status.

If a Law Costs Draftsman or Costs Draftsman is employed by a firm of Solicitors regulated by the SRA then they will be authorised and regulated by the SRA. If they cannot prove their qualification, authorised and regulated status then a client instructs them at their own risk as there will be no recourse to a regulator such as the CLSB, SRA or the Legal Ombudsman. Further, there will have been no checks made by the CLSB or SRA that adequate insurance cover is in place and they may not even have an internal complaints procedure.

This underlines the importance of establishing the qualification, authorised and regulated status of any costs person instructed by either a professional or lay client.

What if a client is unhappy with the service provided by their Costs Lawyer?

A client must first make a written complaint to their Costs Lawyer under their complaints procedure and the Costs Lawyer has up to eight weeks to resolve the matter.

If a client complaint is not concluded to their satisfaction by the end of that eight week period they may escalate their service complaint to the Legal Ombudsman. Their contact details are:

Email: enquiries@legalombudsman.org.uk
Phone: 0300 555 0333
Web: www.legalombudsman.org.uk

What if a client is unhappy with the professional conduct of their Costs Lawyer?

A client must first make a written complaint to their Costs Lawyer under their complaints procedure and the Costs Lawyer has up to eight weeks to resolve the matter.

If a client complaint is not concluded to their satisfaction by the end of that eight week period they may escalate their professional conduct complaint to the CLSB. Their contact details are:

Email: enquiries@clsb.info
Phone: 0161 956 8969
Web: www.clsb.info
Address: Centurion House, 129 Deansgate, Manchester M3 3WR