

GUIDANCE NOTES: CONFLICT OF INTEREST

Regulator: Costs Lawyer Standards Board

Effective date: 11 October 2016

This guidance note has been issued by the Costs Lawyer Standards Board ("CLSB") to assist a Costs Lawyer authorised and regulated by the CLSB ("Costs Lawyer") in recognising and dealing with any conflict of interest that may arise in relation to their client(s).

What is a conflict of interest?

A conflict of interest is a clash between professional obligations and personal interest. Principle 1 of the Costs Lawyer code of conduct requires a Costs Lawyer to act with integrity & professionalism. Principle 3 requires they act in the best interest of their client. Principle 3.1 states *"you must decline to act if it would not be in the client's best interests or if that client's interests conflict directly with your own or with those of another client."*

A conflict of interest can arise between:

- (i) a Costs Lawyer and current client ("Own Interest Conflict"); or
- (ii) two or more current clients ("Client Conflict").

Own Interest Conflict

Prohibition: A Costs Lawyer must not act if there is an Own Interest Conflict or a significant risk of an Own Interest Conflict.

Systems: A Costs Lawyer should have effective systems and controls in place to identify and assess potential Own Interest Conflicts.

A Costs Lawyer should assess all relevant circumstances, including whether their ability to act in the best interests of their client is impaired by one or more of the following:

- (i) A financial interest.
- (ii) A personal relationship.
- (iii) A commercial relationship.
- (iv) Their employment.
- (v) Public appointment of the Costs Lawyer, a member of their firm or family.

Client Conflict

Prohibition: A Costs Lawyer must not act if there is a significant risk of a Client Conflict unless the limited exceptions set out below apply.

Systems: A Costs Lawyer should have effective systems and controls in place to identify and assess potential Client Conflict situations.

A Costs Lawyer should assess all relevant circumstances, including:

- (i) different client interests; and
- (ii) the ability to give independent advice; and
- (iii) the need to negotiate between the clients; and
- (iv) imbalanced bargaining power between the clients; and
- (v) vulnerable clients.

Exceptions: A Costs Lawyer may be able to act where there is a Client Conflict, subject to the safe guards set out below, in the following situations:

- (i) The Clients have a substantially common interest in relation to a matter or a particular aspect of it.
- (ii) The clients are competing for the same objective.

In considering whether to act in these limited circumstances, the overriding consideration will be the best interest of the clients and in particular, whether the benefits to the clients of the Costs Lawyer acting, outweigh the risks.

Safeguards: The Costs Lawyer should:

- (i) have explained the relevant issues and risks to the clients; and
- (ii) have reasonable belief that the clients understand those issues and risks; and
- (iii) have received the clients informed written consent for them to act; and
- (iv) ensure there is no other Client Conflict in relation to the matter; and
- (v) have satisfied themselves it is reasonable to act for all clients and that it is in their best interests; and
- (vi) be satisfied that the benefits to the clients of their acting outweigh the risks.