

## **GUIDANCE NOTES: WORKING AS A COSTS LAWYER OUTSIDE ENGLAND & WALES**

### **Regulator: Costs Lawyer Standards Board**

**Effective date: 11 October 2016**

This guidance note has been drafted in response to the increased incidences of Costs Lawyers undertaking costs law and practice outside England & Wales (“Jurisdiction”) in line with the rise of the global market. In this guidance note, a Costs Lawyer is a Costs Lawyer authorised and regulated by the Costs Lawyer Standards Board (“CLSB”) under the Legal Services Act 2007 (“LSA”).

#### **Does a Costs Lawyer have the legal authority to act outside the Jurisdiction?**

The CLSB regulates pursuant to the LSA and the right of a Costs Lawyer to act directly on behalf of a client within the Jurisdiction arises out of the LSA. The CLSB has no legal authority to grant a Costs Lawyer any authority to act as a Costs Lawyer outside of the Jurisdiction.

#### **Would the CLSB issued Costs Lawyer Code of Conduct (“Code of Conduct”) still apply if a Costs Lawyer is undertaking costs law and practice outside the Jurisdiction?**

Whilst the CLSB has no legal authority to grant a Costs Lawyer authority to undertake costs law and practice outside the Jurisdiction, the Code of Conduct prevails in part (save in the event of permanent establishment in the EU, see below). It is an overarching code on professional conduct, not restricted to the Jurisdiction or to the three relevant reserved legal activities under the LSA.

Those parts of the Code of Conduct which remain relevant are:

*There are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. Adherence to these principles is mandatory.*

*You must:*

- 1. Act with integrity and professionalism.*
- 2. Comply with your duty to the court in the administration of justice.*
- 3. Act in the best interests of your client.*
- 4. Provide a good quality of work and service to each client.*
- 5. Deal with the regulators and Legal Ombudsman in an open and co-operative way.*
- 6. Treat everyone with dignity and respect.*
- 7. Keep your work on behalf of your clients confidential.*

**PRINCIPLE 1: Act with integrity and professionalism**

- 1.1 You must act honestly, professionally and with integrity in all your dealings in your professional life and not allow yourself to be compromised.
- 1.3 You must not give false or misleading information to anyone with whom you deal.
- 1.4 You must not be misleading or inaccurate when you publicise yourself as a Costs Lawyer or your business.
- 1.5 You must not enter into any fee arrangements which are unlawful.
- 1.6 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.

**PRINCIPLE 2: Comply with your duty to the court in the administration of justice**

- 2.1 You must at all times act within the law.
- 2.2 You must not knowingly or recklessly either mislead the court or allow the court to be misled.
- 2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.
- 2.4 You must advise clients to comply with court orders made against them.

**PRINCIPLE 3: Act in the best interests of the client**

- 3.1 You must act at all times to ensure the client's interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. 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.
- 3.2 You must provide for an effective complaints procedure (first-tier complaints handling procedure) which is simple and transparent and ensures that a complaint can be made by any reasonable means and which takes into account the individual needs of clients (in particular the needs of vulnerable clients).
- 3.3 You must ensure that complaints are dealt with promptly (within a maximum 8 week period from date of receipt) openly and fairly and that appropriate provisions for redress exist.
- 3.5 You must identify and rectify any systemic client complaint issues, taking steps to do so promptly upon discovery.
- 3.6 You must not accept client money save for disbursements and payment of your proper professional fees.
- 3.7 You must provide required documentation and information on an application for a practising certificate and in the event of any complaints investigation conducted by CLSB or the Legal Ombudsman.
- 3.8 You must ensure that you maintain professional indemnity insurance which complies with the requirements of the CLSB prevailing at the time and promptly provide evidence of that insurance cover if requested by a client, CLSB, ACL or Legal Ombudsman.

**PRINCIPLE 4: Provide a good quality of work and service to each client**

- 4.1 You must ensure that you only undertake work for which you are properly qualified.
- 4.2 Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you. If you do not have the knowledge, skills or experience to undertake the work you must decline it.
- 4.3 You must ensure that you carry out your professional work in a timely manner with proper regard for standards of professional service and care.
- 4.4 You must keep your professional knowledge up to date by undertaking relevant training in accordance with current Practising Rules.
- 4.5 You must keep the client regularly informed as to the progress of the work and keep accurate records of that work.
- 4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.

**PRINCIPLE 5: Deal with the regulators & Legal Ombudsman in an open & co-operative way**

- 5.1 You must be open, honest and co-operate in your dealings with the CLSB, ACL, other regulators and the Legal Ombudsman responding to any requests promptly and fully within 14 calendar days.
- 5.2 You must promptly notify the CLSB of any breach of this Code by yourself or other Costs Lawyers.
- 5.3 You must not take any action to prevent anyone from reporting you to the CLSB or Legal Ombudsman.

**PRINCIPLE 6: Treat everyone with dignity and respect**

- 6.1 You must treat all clients, staff or third parties with dignity and respect. You should encourage equality of opportunity and must not unlawfully discriminate against them, either directly or indirectly, victimise or harass them on the grounds of age, disability, race, colour, ethnic or national origin, sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief.
- 6.2 You must have / adhere to a written policy which prevents discrimination and harassment and must investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate.
- 6.3 You must make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities.

**PRINCIPLE 7: Keep your work on behalf of your clients confidential**

- 7.1 You must keep the affairs of clients or former clients confidential unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.

Authorised rights set out therein do not however apply to any court outside of the Jurisdiction.

## **The EU**

A Costs Lawyer can seek to establish themselves in an EU Country (“Host State”) to provide Costs Lawyer services on either a:

- temporary or occasional basis; or
- permanent basis.

The relevant European directives on this are 2005/36/EC (Recognition of Professional Qualification), 2006/123/EC (Services in Internal Market) and 2013/55/EU (Recognition of Professional Qualifications & Regulation on Co-operation through Internal Market Information System).

In the UK, statutory instrument titled The European Union (Recognition of Professional Qualifications) Regulations 2015 became effective on 18 January 2016 implementing directive requirements. Other EU member states will have introduced their own legislation to ensure compliance. It is for the Costs Lawyer to establish prevailing laws and rules in the Host State on seeking establishment. The CLSB (“Home State”) will comply with any requirements of a Host State to enable them to consider such an application.

### **A Costs Lawyer established on a temporary or occasional basis in the EU**

Where a Costs Lawyer is so established, the Costs Lawyer must still comply with the Code of Conduct. In addition, the Costs Lawyer must make themselves aware of, and comply with, the local laws and regulations governing their practice in the relevant country, unless such laws or regulations are inconsistent with the principles set out in the Code of Conduct.

The Costs Lawyer is required to ensure their insurer is kept fully informed of the nature of their work being undertaken to ensure their work is both insured, and insured to an adequate level in relation to the risk involved.

### **A Costs Lawyer established on a permanent basis in the EU**

Where a Costs Lawyer is so established, the Code of Conduct will not apply. Instead, prevailing laws and rules on regulation in the Host State will apply.

### **A Costs Lawyer looking to undertake costs law and practice outside the Jurisdiction and not within the EU**

The Costs Lawyer must still comply with the Code of Conduct. In addition, the Costs Lawyer must make themselves aware of, and comply with, the local laws and regulations governing their practice in the relevant country, unless such laws or regulations are inconsistent with the principles set out in the Code of Conduct.

The Costs Lawyer is required to ensure their insurer is kept fully informed of the nature of their work being undertaken to ensure their work is both insured, and insured to an adequate level in relation to the risk involved.

