



Costs Lawyer Standards Board

# ANNUAL RISK OUTLOOK

A tool to help Costs Lawyers recognise and  
mitigate emerging market risks that could  
impact their business

May 2023



## ABOUT THIS REPORT

This report takes a high-level look at some of the drivers of change in the world today that could present risks – and opportunities – for organisations and individuals working in legal costs. Not all of these drivers will have equal significance for you or your business, but our aim is to help you think critically about what’s coming down the track and plan strategically for the future.

The sources of risk identified in this report have been grouped into three broad categories: political, economic, and social. For the most part, these sources of risk mould and shape the costs law market from the outside. Sometimes referred to as “system risks”, these sorts of market drivers are unlikely to be curtailed or otherwise materially impacted by any one firm, practitioner or regulator. Rather, businesses, individuals and regulators all need to consider the likely impact of these drivers on their activities, and put measures in place to mitigate any negative impacts that might arise.

It is for this reason that the sources of risk highlighted in this report do not fall within the types of regulatory risk that the CLSB attempts to mitigate on behalf of the profession. Such risks are explored in our own internal risk register with a focus on addressing public detriment, such as poor client outcomes, unmet legal need or the stifling of innovation. This outlook report does not focus on regulatory risks of that kind.

Rather, this report is about drivers of change that are outside the CLSB’s control, but which may impact on Costs Lawyers’ ability to deliver services to clients in a way that meets their needs. These are risks for you to take into account, being mindful of your own practising arrangements, specialist areas and existing competencies. There will no doubt be other factors and risks that could impact your specific practice; we hope this report gets you thinking about what those might be.

This is the first annual risk outlook published by the CLSB. We would welcome feedback from readers to help us refine our approach in future years. Please send any comments to us at [enquiries@clsb.info](mailto:enquiries@clsb.info).

**Kate Wellington**  
CEO, CLSB

## POLITICAL DRIVERS OF RISK

The political and regulatory issues facing the costs law market operate at many levels and interact closely with the economics of the sector.



### Geopolitical risk

The world of costs has been affected by a growth in litigation – and high-cost complex litigation in London in particular – in recent decades. The global outlook for London as a dispute resolution hub will undoubtedly be influenced by chilling geopolitical relations with Russia, China and Saudi Arabia, not to mention greater strategic competition from other legal centres in Europe and Asia. This may mean lower demand for high-value costs work over the medium to longer term.

Geopolitical issues also factor into costs work through the continually evolving anti-money laundering regime, the impact of sanctions, and gradually tightening guidance (and possible regulation) around SLAPPs.<sup>1</sup> Costs recovery could be increasingly caught up in political debates such as these, with capping of recoverable costs used as an instrument to attempt to dissuade malicious litigation or compensate for any underlying inequality of arms.

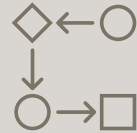


### Reform of the Legal Services Act 2007

There are well known difficulties with the regulatory framework for the legal sector established by the Legal Services Act 2007.<sup>2</sup> At a national level, all UK political parties are preparing for a general election in 2024. Even if current polls are expected to narrow over the coming year, there is a high probability of a change in governing political party, which raises the prospect of domestic constitutional change on a scale last seen in the 1997-2001 parliament. This further suggests that any proposals for major legislative change effecting legal sector reforms would be unlikely for at least the next five years, and more likely the next decade.

The implication is that any efforts towards reform of the regulation of the legal sector will need to be achieved within the framework of the existing Legal Services Act.

## POLITICAL DRIVERS OF RISK



### Wider legislative change

Meanwhile, other legislation, court reforms and changes to the Civil Procedure Rules – such as extension of fixed costs, whiplash reform, changes to judicial review, and possible regulation of the litigation funding market – will continue to evolve with varying (and not always predictable) consequences for the costs law market. The introduction of novel legislation could create new areas of demand (see the next section on economic drivers).



### The legal aid budget

The ongoing controversy around the legal aid budget remains as much a political as an economic issue. Costs Lawyer services should be in higher demand to maximise recovery from a limited budget but the number of solicitors' firms offering legal aid is also likely to continue to shrink.



### Scotland and Wales

Scotland's legal reform process may also become relevant as regulators in England and Wales consider options presented by the Scottish Executive for reform north of the border and incorporate them into the debate around reforms that can be implemented here without legislative change. Of particular interest in the costs law market is the proposal for two-tier regulation of B2B services and consumer facing services.<sup>3</sup>

The further development of a potential separate Welsh jurisdiction in future, although not imminent, is worth watching as it could impact on the demand for costs law services in Wales.

## POLITICAL DRIVERS OF RISK



### Legal sector regulation

As far as the regulation of the legal sector is concerned, unless there is a significant change of direction under the new chair<sup>4</sup> of the Legal Services Board (the sector's oversight regulator), the current strategic course set until 2030 – with its emphasis on consumers, reducing costs in the sector and improving diversity – is likely to be maintained, shaping expectations for regulatory priorities within the costs law market.

#### **Solicitors Regulation Authority (SRA)**

Around half of all regulated Costs Lawyers work in SRA regulated businesses, so changes in SRA rules may impact Costs Lawyers either directly (for example, changes in accounts rules) or indirectly by impacting how the CLSB regulates (for example, through the need to avoid a conflict in rules that would increase the compliance burden unnecessarily).

#### **Chartered Institute of Legal Executives (CILEx)**

The politics between legal regulators may become more of an issue as the consequences of the move by CILEx to re-designate its regulatory powers from CILEx Regulation to the SRA<sup>5</sup> opens up the potential for a move towards a single legal regulator and could increase interest in regulatory shopping.<sup>6</sup> Given that around half of all Costs Lawyers work in solicitors' firms, the view of solicitor employers of the net benefit of hiring Costs Lawyers, as opposed to other forms of regulated lawyers, may become more relevant.

#### **Association of Costs Lawyers (ACL) and others**

The relationships between the stakeholders involved in the regulation, representation and training of Costs Lawyers – most notably the CLSB, ACL, ACL Training and the Legal Services Board – are currently on a positive footing. This is not always guaranteed, particularly given the bilateral oversight and monitoring roles that are central to many of these relationships. Any gaps in oversight, or failure to collaborate constructively, could impact the viability and reputation of the profession.

## ECONOMIC DRIVERS OF RISK

Economic forces create both pressures and opportunities in the costs law market, from the changing nature of supply and demand for Costs Lawyers' services to the emergence of substitutes along with new products and business models.



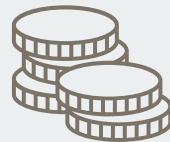
### General economic outlook

The outlook for the UK economy over the next 3 years is not encouraging. Price pressures are coming down but inflation remains above 10% and is predicted to fall slowly over the course of 2023 and 2024.<sup>7</sup> At the same time there will be tightness in the jobs market and prevailing uncertainty creating caution in investment and job hiring.<sup>8</sup> All of which will feed into both the demand for legal services and the supply-side for both Costs Lawyers and their employers.



### International competitiveness

Although the UK is forecast to lose international competitiveness over the next few years, on the basis of the current policy course, there are no immediate signs that this is deterring US litigation firms from entering the UK market. This is potentially important for the demand for Costs Lawyers' services, as our recent research project<sup>9</sup> found evidence that US firms are becoming a relevant source of demand for Costs Lawyers, particularly at an earlier stage of proceedings and litigation planning.



### Increased emphasis on costs management

The growth of supply-side attempts to manage costs more effectively may reduce, or at least change, the demand for Costs Lawyers. Examples of these supply-side measures include an ongoing interest in legal project management from law firms, the entrance of new suppliers aiming to get clients to focus on costs at an earlier stage (see the section on social drivers of risk), roll out of e-billing beyond pilot stage and the extension of fixed costs.

## ECONOMIC DRIVERS OF RISK



### Growth areas for litigation

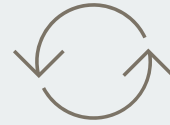
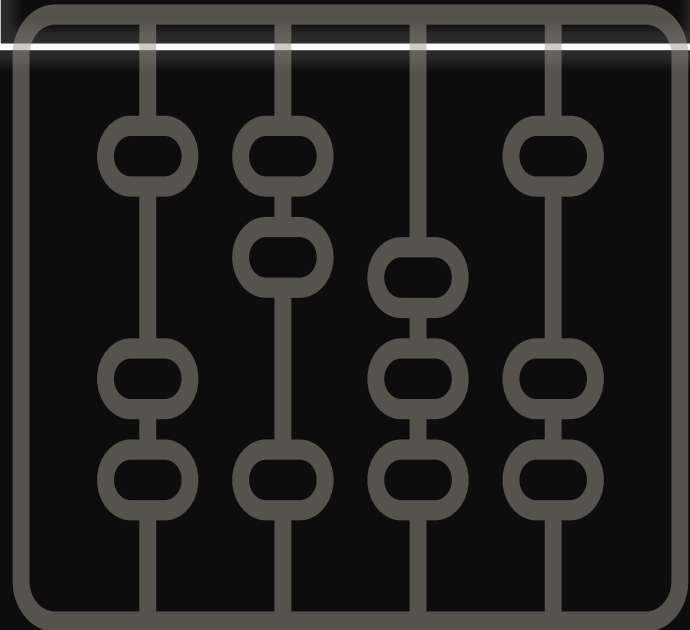
While traditional sources of litigation work for Costs Lawyers may have been in areas like high value commercial disputes and large-scale personal injury claims, market analysts see plenty of new growth areas for litigation over the next few years<sup>10</sup> including, most relevantly:

- Areas of regulatory uncertainty, for example in the food sector (around insects and cannabidiol (CBD)), carbon neutrality claims and shareholder activism, healthcare litigation and business crime.
- Intellectual property and data protection disputes as the complexity of Brexit begins to set in.
- Ongoing post-Grenfell litigation relating to building regulations and cladding, including insurance aspects.
- An increasing number of investigations and public enquiries, particularly managing the costs of such enquiries for the various parties to them.
- An anticipated explosion of consumer debt as a result of the cost of living crisis.
- New growth in third party funding and innovation in how firms want to fund cases, coupled with new entrants into the funding market.<sup>11</sup>

Key challenges for the costs market will be:

- i. Whether there is a sufficient number of Costs Lawyers to contribute meaningfully to these developments.
- ii. Whether existing Costs Lawyers are sufficiently specialist/flexible to adapt to these new demands. If not, there may be a risk that unregulated costs advisers fill the void, notably around consumer debt issues.

## ECONOMIC DRIVERS OF RISK



### Interplay with the solicitors' profession

There is a supply-side risk posed to the costs law market from the collapse of certain types of firms regulated by the SRA (such as Pure Costs<sup>12</sup>) that are employers of significant numbers of Costs Lawyers. If Costs Lawyers are over-dependent on SRA regulated entities for employment, this not only exposes Costs Lawyers (and by extension the CLSB) to the risk of entity failure but suggests that there might be services that Costs Lawyers could be providing to solicitors' firms – or to organisations and individuals whose interests might diverge from those firms' profit motivation – that are not currently on offer due to a lack of independence of Costs Lawyers from the solicitors' profession.



### The economics of the regulatory model

The continued existence of CILEx Regulation (CRL) is currently at risk due to a decision by CILEx to re-designate its regulatory powers.<sup>5</sup> An important contributory factor to this decision has been the inability of CRL to gain the necessary recognition from financial institutions that would allow CILEx regulated entities to access important areas of the market (such as panel recognition by mortgage lenders) due to its internal capacity and relatively limited entity regime. This cautionary tale illustrates the challenges and expense of entity regulation within smaller parts of the legal profession.



## SOCIAL DRIVERS OF RISK

Risks arising from social trends and developments tend to be harder to pinpoint than economic or political/regulatory risks – often because they evolve slowly and the ultimate extent of their influence can be difficult to predict – but their impact can be transformative.



### Consumer awareness of the law

Market reports<sup>13</sup> suggest that the pandemic has helped to increase significantly consumers' willingness to engage with lawyers remotely and awareness of the different options open to them. This may encourage consumers to seek online solutions to legal issues, and whilst in the abstract that might be welcome, the risks involved for them in doing so may be increased if consumers are unclear about the protections they have (or do not have) and the costs exposure they face from engaging in litigation.



### Higher premium attached to ESG

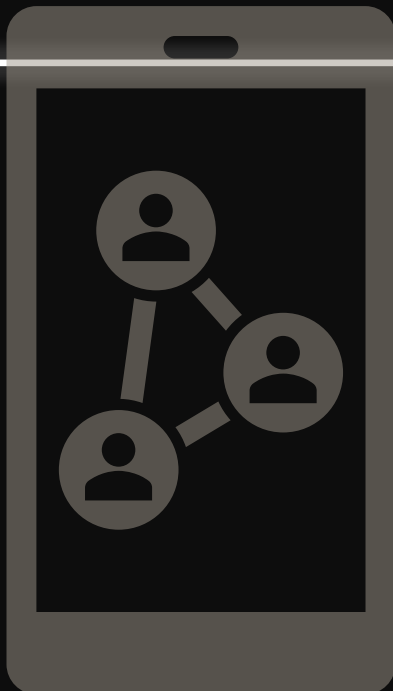
Environmental, social and governance (ESG) issues are exploding in importance within the legal sector, both in relation to compliance by firms and advisory and contentious ESG work for clients. The role for Costs Lawyers in these issues, whether using a costs auditing role or in evaluating litigation risk around ESG or otherwise, are yet to be fully investigated.



### Diversity and inclusion

The socio-political focus on widening participation in professions, including the legal profession, is likely to gain further traction as law firms come under pressure from regulators and clients to demonstrate ESG compliance. Employers will be interested in accessing talent from more diverse backgrounds and it may be that widening routes into the solicitor profession attracts away individuals who might historically have joined the costs law profession through employer sponsored entry.

## SOCIAL DRIVERS OF RISK



### Technological change

There are a variety of social trends relating to the use of technology that are likely to have an impact on Costs Lawyers.<sup>14</sup>

#### **The take up of technology by the courts**

The pace of technological change in the justice system is expected to accelerate significantly over the next few years. Both the Ministry of Justice and the court system (HMCTS) have ambitious agendas for the adoption of technological solutions<sup>15</sup> and are targeting in particular automated dispute resolution platforms and improved systems for legal aid providers and applicants – all of which could reduce the demand for Costs Lawyers' services in their traditional form.

#### **The use of technology to reduce the need for litigation**

Technology driven new entrants, such as Pursuit,<sup>16</sup> are attempting to persuade the legal market to use fixed fees and smarter legal pricing across the board, including in litigation. Further ahead, the increased adoption of blockchain technology in smart contracts is likely to reduce the need for litigation over contractual terms, although we may see more complex litigation relating to the technology itself emerge in its place. These developments may not eliminate the need for Costs Lawyers, but are likely to change the nature of the costs services their clients are looking for.

#### **Cyber crime and information security**

The move to remote and hybrid working following the pandemic has made many businesses, including law firms, more dependent than ever on IT systems. With increased dependence comes increasingly sophisticated threats that must be predicted and managed. Threats in the form of scams (such as phishing attempts and email modification frauds), ransomware used to steal information and block system access, and attacks spreading between legal providers who work together (such as instructing solicitors, barristers and Costs Lawyers) have all been experienced recently in the legal sector, often with very serious consequences.<sup>17</sup>



## SOCIAL DRIVERS OF RISK

## COMPETENCY RISK



### Demand for legal careers

Demand for legal careers remains high (based on HESA enrolment statistics) but apprenticeships are taking a growing share of the school leaver market, as SRA education reforms kick in and as the earnings premium attached to having a degree declines.<sup>18</sup> Higher apprenticeship start figures in 2020/21 were equivalent to 15% of the number of students enrolling in the first year of an undergraduate degree in the same year. The absence of a costs law apprenticeship option potentially reduces the competitiveness of costs law as an entry level qualification as does the recognition of the costs law qualification for cross-qualification within the legal sector or more broadly.



### Emerging gaps in competency

As we have seen in this report, a variety of political, economic and social developments are driving changes in the costs law market, from the type of services Costs Lawyers provide to the type of clients they act for, and the ways in which they work and organise themselves. Costs Lawyers should consider – when setting their annual CPD objectives or otherwise – what knowledge and skills they need to respond to the changing landscape to ensure they remain competent to do the job.

Examples of possible competency gaps that could arise from the drivers set out in this report include:

- Understanding how to use new technologies and systems, and the risks associated with them
- Appreciating the changing needs of clients and how to address them
- Adapting organisational management to changing workplace expectations
- Grasping how new regulatory and ethical obligations apply to specific practising arrangements
- Having sufficient technical knowledge of emerging work areas to spot issues and give sound advice

# REFERENCES

1. Strategic Litigation against Public Participation, see for example [Crackdown on SLAPP suits could include new legal regulations | News | Law Gazette | 17 March 2022](#)
2. See for example [Reforming legal services: regulation beyond the echo chambers | Professor Stephen Mayson | 2020](#) (final report of the Independent Review of Legal Services Regulation)
3. [Legal services regulation reform - consultation analysis | Scottish Government | 22 December 2022](#)
4. [Alan Kershaw Confirmed as New LSB Chair as Dr Helen Phillips Steps Down | News | Legal Services Board | 6 February 2023](#)
5. See for example [Investigation into disputes between the Chartered Institute of Legal Executives and CILEx Regulation Limited | Investigation Report | Legal Services Board | 18 April 2023](#)
6. Regulated individuals or entities shopping around between regulators on the basis of differences in practising arrangements, conduct standards and other distinguishing features.
7. Based on [data from the Office for National Statistics](#) to March 2023
8. [Monthly Decision Maker Panel Data | Bank of England | 4 May 2023](#)
9. Research project funded by the Regulators' Pioneer Fund asking [How could Costs Lawyers reduce the costs of legal services?](#)
10. [Litigation Trending: Ten predictions for 2022 | Ashurst | 10 January 2022](#)
11. [The evolution of the UK litigation funding market – future trends? | Macfarlanes | 30 June 2022](#)
12. [Investigators probe collapse of Pure Business Group | News | Law Gazette | 18 November 2022](#)
13. See for example [The 2022 Legal Trends | Clio](#)
14. See generally [Technology Trends Outlook 2022 | McKinsey](#)
15. See for example [The Future for Dispute Resolution: Horizon Scanning | www.judiciary.uk | 17 March 2022](#)
16. [www.persuit.com/product](#)
17. See for example [Risk Outlook Report: Information security and cybercrime in a new normal | Solicitors Regulation Authority | 1 June 2022](#)
18. [How have changes in higher education participation and degree class awards impacted graduate earnings? | HESA | 23 November 2021](#)