



## Costs Lawyer Standards Board

### AGENDA

**Wednesday 21 April 2021 @ 10.30am**

**Remotely via videoconference**

<b>Board:</b>	David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Paul McCarthy	Non-Lay NED
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	CEO and Company Secretary
	Jacqui Connelly	Administration Manager
	Prof Carl Stychin	Independent Education Adviser (item 3.2)
	Heather Clayton	Director of Policy (item 3.3)

*Note: Agenda items in blue are standing items*

	Agenda item	Paper	Publish <sup>1</sup>	Lead
1	<b>Opening matters</b> 1.1 <a href="#">Quorum and apologies</a> 1.2 <a href="#">Declarations of interest on agenda items</a>	- -		DH DH
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes</a> (20 January 2021) 2.2 <a href="#">Matters arising</a> (20 January 2021)	Item 2.1 -	Yes	DH DH
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan: Q1 2021</a> 3.2 Education and competency 3.3 Consumer outcomes	Item 3.1 Item 3.2A-C Item 3.3A+B	Yes No (B) Yes	KW KW HC
4	<b>Board matters</b> 4.1 Input for strategy day agenda	-		DH
5	<b>Finance</b> 5.1 <a href="#">Quarterly report: Q1 2021</a> 5.2 Practising Fee Rules and updated Reserves Policy	Item 5.1 Item 5.2A+B	No (D, E) Yes	JC KW

<sup>1</sup> The letters used in this column indicate the reason for any non-publication of papers. They correspond to the reasons set out in our publication policy, which can be found on the [What we Publish](#) page of our website.

6	<b>Risk management</b> 6.1 <a href="#">Review of risk registers</a> 6.2 Coronavirus impact survey report	Item 6.1 Item 6.2	Yes Yes	KW KW
7	<b>Regulatory matters</b> 7.1 Updated guidance notes 7.2 2020 CPD audit outcomes 7.3 Supervision frameworks 7.4 Guidelines for complainants 7.5 Feedback from Accredited Costs Lawyers 7.6 The Costs Lawyer profession in 2020 report	Item 7.1A-F Item 7.2 Item 7.3A-D Item 7.4A+B - Item 7.6	Yes Yes Yes Yes  Yes	KW JC KW KW KW/JC KW
8	<b>Legal Services Board (LSB)</b> 8.1 Outcome of strategy and business plan consultation 8.2 Other workstreams	- Item 8.2	 Yes	KW KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 <a href="#">ACL Council meeting minutes</a> 9.2 Work updates	Item 9.1 Item 9.2	Yes No (B)	KW KW
10	<b>Operational matters</b> 10.1 Digital work programme update	-		JC
11	<b>Publication</b> 11.1 <a href="#">Confirmation that papers can be published</a>	-		DH
12	<b>AOB</b>	-		DH
13	<b>Next meeting</b> <a href="#">Date: 21 July 2021 @ 10.30am</a> <a href="#">Venue: To be agreed</a>	-		DH

---

<sup>2</sup> This agenda item is used to update the board on significant developments relating to the work of the Legal Services Consumer Panel, Association of Costs Lawyers, ACL Training, Legal Ombudsman (including exception reporting on service complaints) and other relevant stakeholders.

**DRAFT APPROVED BY THE CHAIR FOR PUBLICATION**  
**Subject to approval by the full board at its next scheduled meeting**

**MINUTES**  
**Costs Lawyer Standards Board Ltd**  
**Wednesday 20 January 2021 at 10.30 am**  
**Remotely by videoconference**

**Present:** Steve Winfield (Lay Chair)  
Stephanie McIntosh (Lay Vice Chair)  
Paul McCarthy (Non-Lay NED)  
Andrew Harvey (Lay NED)  
Andrew McAulay (Non-Lay NED)

**In attendance:** Kate Wellington (CEO and Company Secretary)  
David Heath CBE (Incoming Chair)  
Jacqui Connelly (Administration Manager)  
Stephen Gowland (NED, Legal Services Board – item 1.3)  
Steve Violet (Policy Manager, Legal Services Board – item 1.3)

**1. OPENING MATTERS**

- 1.1** The Chair declared the meeting quorate. There were no apologies.
- 1.2** There were no declarations of interest on any agenda item.

**1.3 Roundtable with Stephen Gowland, LSB Board Lead for the CLSB**

Stephen was invited to join the meeting for an introductory session with the CLSB's board members, supported by Steve Violet (the LSB's relationship manager for the CLSB). Following introductions, Stephen explained his professional background and the perspective he brought to the LSB's board and decision-making process. He noted his experience of working with Costs Lawyers as a practitioner and explained that part of his role as Board Lead for the CLSB was to gain a deeper understanding of the Costs Lawyer market and the CLSB's regulatory priorities, challenges and ways of working at board level. The Board Lead could also act as a relationship touchpoint with the LSB and as a sounding board where necessary.

Board members then asked questions of Stephen. The discussion covered the LSB's forward-looking priorities – particularly those in the strategy for the sector that was currently out for consultation – and how those priorities were likely to impact the CLSB, including resource implications.

Board members also asked about the future of the regulatory performance assessment and the LSB's intentions to carry out more thematic and "deep dive" reviews of certain areas. Steve V explained that the LSB wanted to ensure consistency of approach across its core statutory functions, including regulatory performance, the

practising fee approval process and assessing alterations to regulatory arrangements. The aim was for these to work more in concert and for each process to inform the others. Reviews were underway in relation to practising fee approvals and changes to regulatory arrangements, while the approach on the regulatory assessment had been to focus on the in-depth governance reviews of the BSB and Faculty Office. The LSB was looking to publish preliminary views on those soon. More activity would then follow, but at this stage Steve could not say what or when this would be.

A wider review of the regulatory assessment framework was also upcoming. The group discussed the importance of understanding the differences between regulators in terms of resourcing, and the need to ensure the framework is proportionate in allowing for regulators of varying sizes to achieve similar aims.

The group also discussed the LSB's role as an enabler within the sector and the importance of collaboration. It was agreed that opportunities to consolidate learning and data across the sector for the benefit of all regulators and consumers should be seized upon; this would be central to the success of the LSB's sector-wide strategy.

Steve W thanked Stephen and Steve V for their time and invited them to attend again at a sensible point in the future. He also emphasised that communications between the LSB and CLSB at executive level were now working very well, with thanks to Steve V and Kate, and asked Stephen to convey this to the LSB board as appropriate.

## **2. MINUTES**

### **2.1 Minutes dated 20 October 2020**

The board considered the minutes of its last scheduled quarterly meeting on 20 October 2020. The board agreed the minutes as being a true record for signing.

***Action: Publish approved minutes on CLSB website.***

### **2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 20 October 2020. There were no matters arising that had not been scheduled as agenda items or otherwise dealt with.

## **3. STRATEGY**

### **3.1 Progress against Business Plan: 2020 roundup**

The board was provided with a progress update against the 2020 Business Plan, updated to the end of the year. Kate explained that five further priorities had been achieved in Q4, completing the Business Plan in its entirety other than two items (8 and 10) that were deprioritised earlier in the year.

The board conveyed its thanks to Kate and Jacqui for their achievements during the year that had led to full delivery of the plan. This was a significant achievement and suggested that the new approach to business planning (adopted from 2020) resulted in an ambitious yet realistic and targeted programme of work.

The board discussed the challenges around keeping up momentum and resourcing as new projects came online in 2021 and the initiatives from 2020 became business as

usual. The board also agreed that any decisions to defer Business Plan priorities during the year should be revisited each quarter to ensure they remain valid. It was agreed that deprioritisation of items 8 and 10 in 2020 was still the right approach.

Finally, board members agreed that it was important to communicate achievement of the Business Plan to the regulated community and other stakeholders, as part of providing ongoing assurance that the organisation is well run, has clear plans, and delivers against those plans. Kate agreed to include a piece on this in an upcoming newsletter.

**Action: Begin reporting against the 2021 Business Plan at the April meeting.**

### **3.2 Annual progress against performance indicators**

The board was provided with a summary of progress against the metrics in the performance indicators document (PID) adopted in January 2020. The performance indicators were developed to help the board monitor the effectiveness of the CLSB's governance arrangements and track achievement of the mid-term strategy.

The board was asked for feedback on the progress made in 2020, as well as the ongoing relevance of the performance indicators. Kate recommended tweaking certain measures in 2021, as outlined in the report, but noted that overall she had found assessment against the PID to be a useful reflective exercise and suggested a similar approach be taken going forward.

The board discussed the report. In relation to the metric on accumulation of reserves, it considered whether the adjusted target date of 2025 was too far in the future. Board members acknowledged that the planned rate of contribution made it unlikely that the target would be reached before 2025. However, in the volatile environment created by COVID, there was an argument for making larger annual contributions to ensure the CLSB could take opportunities as they arose and respond adequately to external pressures. The board noted that the LSB's proposed new Practising Fee Rules – which could require the return of any underspend to the regulated community – would limit flexibility to make additional contributions in the future. Ultimately the board was satisfied that the £20k contribution in 2020 would help accelerate the rate of accumulation, and hoped the LSB would reconsider the restrictions in its Practising Fee Rules following consultation.

In relation to the business continuity metric, the board agreed that the organisation was in a very different place to when the PID was first drafted. This metric should be reframed to better reflect ongoing risks.

The board was provided with the results of a NED satisfaction survey that had been carried out to provide data for the governance metric relating to cultural alignment and accountability. It was agreed that the results would provide useful background for the board's upcoming strategy day. It was also agreed that the metric should be adjusted so that the survey was run annually.

The board agreed the other adjustments to the metrics suggested in the report.

**Action: Update PID for 2021 and publish on website.**

### 3.3 Education and competency

Kate provided the board with details of various developments relating to education, including:

- progress with ACL and ACLT on completion of the qualification audit under the new framework;
- confirmation that ACLT had taken on new students in 2021 and a report on provisional numbers;
- an update on governance and viability issues relating to the course;
- the appointment of Professor Carl Stychin as an independent education adviser to the CLSB;
- emerging plans for a project to create a new point-of-entry competency framework for qualifying Costs Lawyers, and feedback from discussions with various experts about this proposal;
- potential options and opportunities arising out of the above.

The board discussed these issues in detail. It was noted that obtaining the audit materials from ACL was taking significantly longer than anticipated. The board considered whether the issue should be escalated and decided that Kate could come back to the board as and when escalation became necessary.

The board strongly supported the proposal to develop a competency framework and board members offered to assist. The board discussed how the project should be approached. Andrew M noted that work on a competency framework had been done by ACLT several years ago and this might make a good starting point.

It was agreed that developing the competency framework would bring a variety of benefits and opportunities, such as:

- ensuring that competency requirements for newly qualified Costs Lawyers are transparent, up to date and relevant in the modern marketplace;
- creating more flexibility for course providers to adjust their content to meet student need and address market changes over time;
- providing a clearer framework for accrediting existing and new routes to entry;
- providing a robust evidence base for any rule changes that are required in the future;
- creating a foundation for developing other competency outcomes at different stages of a Costs Lawyer's career.

Board members felt that having one or more stable and accessible routes to entry is imperative for the CLSB, the profession and students, including for diversity and inclusion reasons. The competency framework would be a key aspect of ensuring this in the long term. Kate explained that a project plan was underway but not yet finalised. She agreed to circulate the plan to the board as soon as it was available so the project could commence in Q1.

**Action: Circulate competency framework project plan out of meeting.**

#### **4. BOARD MATTERS**

##### **4.1 Appointment of incoming Chair**

The interview panel for the Chair role (Andrew H, Paul and Kate) met with five exceptional candidates in November 2020 and unanimously recommended the appointment of David Heath. Following the board's prior indication by email that David should be offered the role, the board resolved to appoint David as Chair of the board from 18 March 2021 for an initial one year term, in accordance with the Board Appointment Rules.

**Action: File notification of change with Companies House.**

#### **5. FINANCE**

##### **5.1 Quarterly report: Q4 2020**

Jacqui introduced the quarterly finance report. She noted that, while there were significant variances from the original 2020 budget, which was produced in mid-2019, the final position was in line with more recent forecasts. The board considered the financial position at year end. The board agreed to transfer part of the budget surplus to reserves, by way of a £20k contribution rather than the budgeted £10k, in line with the Reserves Policy.

The finance report included feedback obtained from the accountants on the merits of obtaining charitable status. The report concluded that this was not worthwhile for the CLSB, despite some other regulators taking this approach, as the CLSB already benefits from many of the tax advantages of charitable status without the burden of additional regulation. The board agreed it was not necessary to pursue charitable status now, but this should be kept under review, particularly if any future CLSB initiatives had VAT implications.

Jacqui noted that work was underway to improve presentation of the finance report by better integrating annual expenditure and income (which is split across two years given the timing of the practising certificate renewal process). The board welcomed the approach and thanked Jacqui for improvements that had already been made to the management accounts during 2020.

In relation to creating a new Director of Policy role – as had been approved at the October meeting – Kate updated the board on the recruitment process and explained that it had become clear a more flexible model could bring numerous benefits given the CLSB's limited budget. To this end, she reported that the services of Lucerna Partners (a specialist regulatory policy consultancy) had been secured to provide targeted policy support during 2021, alongside the CLSB's existing consultants. The board supported the approach and welcomed the appointment.

**Action: Effect £20k transfer to reserves.**

##### **5.2 Cost of living wage rise**

The board considered the annual standing item of a pay rise across all employees to reflect the increasing cost of living. Projected inflation for 2021 was 1.2%, with inflation in 2020 also being reported as 1.2%. On this basis, the board approved a salary increase of 1.2% for all staff, implemented from 1 March 2021.

**Action: Implement approved wage rise from 1 March 2021.**

## 6. RISK MANAGEMENT

### 6.1 Review of risk registers

The board reviewed the risk registers and considered whether any new risks should be added, any existing risks removed or any risk scores changed. The board agreed to:

- update the controls around risk OP2 (*organisational structure not sufficient to ensure business continuity*) to reflect the policy support procured for 2021;
- close risk OP7 (*a no deal Brexit undermines regulatory structures*), due to successful implementation of post-Brexit regulatory arrangements (see Item 7.3).

In October, the board agreed that risk OP1 (*more leave than enter the profession*) should remain red, but that this should be revisited in the following quarter. Kate updated the board on the likely number of new qualifiers in 2021 and the expected rate of natural attrition, taking COVID and other factors (such as the age profile of the profession) into account. The final position for 2020 (taking into account terminations, reinstatements and new qualifiers up to year end) saw the regulated community contract by 11 Costs Lawyers. The expectation would be similar for 2021. On that basis, the board agreed OP1 should remain at the highest risk level.

The Non-Lay NEDs updated the board on a recent announcement that the government would be delaying implementation of the high-profile whiplash reforms until May. The board discussed the potential impact of the reforms on the costs market, particularly changes to the volume and complexity of instructions in low value PI claims, including a possible increase in the proportion of instructions from lay clients who had been unrepresented at earlier stages of substantive PI proceedings. The shifting client profile could increase risks around identifying client vulnerability and handling client money. The board agreed to add the reforms to the evidence of risk OP1 as well as risk R2 (*Costs Lawyer accepting client money*), but not to adjust the risk ratings until the likely impact became clearer. Andrew M agreed to speak with contacts in the market to get a wider perspective of impact.

Andrew M also reported an anecdotal rise in enquiries from lay clients in recent months, some of whom had been represented by a solicitor at earlier stages of proceedings and some of whom had been litigants in person throughout. The board discussed the potential for the risk profile of the profession to shift if the nature of instructions changed materially, but also noted opportunities for gathering more data about lay client needs and experience over time. The Non-Lay NEDs agreed to monitor this trend within their own networks and report back to the board. Statistics from the regulatory return would also be available in April, including new data on lay client instructions.

The board considered whether, in addition to removing risk OP7, other “green” risks should now also be removed. The board agreed to retain OP4 (*ACL becomes insolvent*) at least until the future of the qualification was more certain and ACL’s consultation on its membership structure had played out.

Finally, the board discussed new risks to competency and standards from the long-term adoption of home working during and after the COVID pandemic. Risks relating to supervision and training are often addressed at firm level, but as the CLSB does not



regulate entities, monitoring supervision systems is more difficult. The board agreed to update risk R1 (*standards set by CLSB do not achieve positive consumer outcomes*) to capture the increased risk. It was agreed that the issue should be addressed in the new guidance for employers of Costs Lawyers, which was a Business Plan priority for 2021. The guidance should be noted in the controls for risk R1.

***Actions: Update risk registers as agreed and publish on website; Non-Lay NEDs to provide update on likely impact of whiplash reforms and shifting client profile at April meeting.***

## **6.2 Coronavirus**

The board discussed the ongoing impact of coronavirus on the profession and its clients. Paul and Andrew M provided feedback on the state of the market. The national lockdown has had a limited impact on professional services with good remote working systems already being in place across the costs market. Anecdotally, many firms are anticipating part-remote working carrying on after the pandemic ends. The main impact of the lockdown appears to be on mental health and wellbeing. Work levels are high across litigation generally, other than potentially in PI given the reforms discussed earlier.

The board considered the impact on the justice system generally and the risks this posed to the profession. Paul reported an increase in ADR given the delays experienced in certain types of litigation, which presented another opportunity for Costs Lawyers to assist clients in a different way.

In October, the board had agreed that the next coronavirus impact survey should be conducted in Q1 2021, with the precise timing and any additional questions to be agreed at this meeting. Given that the flow of work into the profession had largely settled and remote working had bedded in, the board felt it was the right time to run the survey again. Kate agreed to launch the survey in time for results to be analysed prior to the April board meeting. A question would be added around the likelihood of continuing with remote working in the longer term.

***Action: Launch next coronavirus impact survey, including a new question on long-term remote working.***

## **7. REGULATORY MATTERS**

### **7.1 Case Manager guidance under the DR&P**

Kate explained that, having implemented new Disciplinary Rules and Procedures (DR&P) and supporting documents in 2020, guidance for the newly created Case Manager role had been finalised in Q4 in line with the Business Plan.

The board scrutinised the proposed draft guidance. Board members discussed the ability to adjourn proceedings, including who would take this decision and whether a limit on adjournments should be imposed. It was noted that interim suspension orders could be used to protect the public, but that these could have punitive consequences. It was agreed that, ultimately, a decision on whether further adjournments should be permitted must remain at the discretion of the Conduct Committee with relevant factors being assessed on a case-by-case basis. Board members also queried whether funding should be made available for a Costs Lawyer involved in disciplinary

proceedings to be legally represented, particularly where the CLSB had an external advocate. It was noted that the DR&P would not disallow this and, again, it could be considered on a case-by-case basis if fairness required it.

The board approved the guidance for adoption.

**Action: Update Internal Handbook with approved guidance.**

## **7.2 Guidance note on ATE insurance**

Kate explained that, having completed phase 2 of the Handbook audit in Q3 2020, she had begun to prioritise the remaining Handbook materials for review in line with the 2021 Business Plan. That exercise showed that the oldest piece of guidance – a guidance note on After the Event (ATE) insurance dating from 2014 – was now inaccurate. The guidance note was therefore withdrawn from the Costs Lawyer Handbook in November.

As the subject matter remained relevant, an updated guidance note was prepared in Q4. The board considered and approved the new guidance.

**Action: Update Costs Lawyer Handbook with approved guidance note.**

## **7.3 Recognition of European qualifications post-Brexit**

Kate reminded the board that the CLSB is required by legislation to implement a regime for recognising the professional qualifications of certain foreign nationals who wish to practise as Costs Lawyers in England and Wales. Changes to that regime were required after the UK exited the EU, with amending legislation coming into force at the end of the transitional period (31 December 2020).

In October 2019, the CLSB had sought and obtained LSB approval for the implementation of new regulatory arrangements that would comply with the changes, as anticipated at that time. Kate informed the board that, in November 2020, the government passed a new SI containing a different (temporary) post-Brexit regime for the recognition of professional qualifications along with a transitional regime for Swiss nationals. BEIS guidance on the temporary regime was not available until early December.

Work had therefore accelerated in December to draft new regulatory arrangements and have them approved by the LSB under Exemption Direction 133 prior to 31 December. Kate reported that the new rules and application forms went live on the CLSB's Foreign Qualified Costs Lawyers webpage just before Christmas, along with guidance about how to apply for recognition.

The board was provided with the new Recognition of European Professional Qualifications Rules. Kate explained that, given the tight timescales, the Rules had to be implemented without the benefit of prior board scrutiny. The board was invited to comment on the Rules, on the understanding that an application to amend the Rules could still be made under ED133 until that instrument was withdrawn by the LSB.

The board discussed the Rules and, agreeing that no amendments were necessary, formally approved them.

#### **7.4 Implementation of new CPD Rules**

Kate explained that, in line with the agreed communications plan, the new CPD Rules were implemented in the first working week of the year. The main information hub for practitioners was now the CLSB's dedicated CPD webpage, which had been redeveloped for the launch. Kate conveyed the measures that had been taken to raise awareness of the changes and noted that a Virtual Q&A was scheduled for 3 February.

The Non-Lay NEDs provided feedback on how the changes had landed with their colleagues. They noted that they both worked in SRA-regulated firms, so the changes did not have a significant impact, but they would seek wider views. The board supported the use of different communication channels and welcomed the intention to adjust communications throughout the year in response to feedback received.

#### **7.5 CMA review of market study recommendations**

The board was provided with a summary of the CMA's conclusions from its review of its 2016 market study recommendations. Kate reported on the key findings and what they meant for the CLSB in the short and medium term.

The board discussed the findings, particularly around transparency and regulatory reform. The board noted that the report referred specifically to the difficulties faced by the CLSB in making rules on price transparency (given that it does not regulate entities) and appreciated the CMA's engagement on this issue during the evidence gathering process. Kate noted that work on quality indicators was currently being spearheaded by the SRA and CLC. The board agreed that the CLSB should collaborate on this work where it made sense to do so, but its involvement would inevitably be reactive given that few Costs Lawyer instructions come directly from lay consumers and SMEs (who are the main beneficiaries of quality indicators).

The board agreed that immediate next steps for the CLSB would depend to some extent on the areas of the report that were prioritised by the LSB as having sector-wide impact.

### **8. LEGAL SERVICES BOARD (LSB)**

#### **8.1 Updated regulatory assessment**

The board was provided with the LSB's latest regulatory performance assessment from November 2020.

Kate reminded that board that the timing of the CLSB's assessment was out of synch with the other regulators. In August, the CLSB had moved from "amber" (not met – action being taken) to "green" (met) against five standards. The remaining four "amber" standards were not included in the November assessment. However, the LSB had sought further information in relation to two "green" standards – RA1 and S4 – as well as the new standard WL7 relating to independence from ACL. The board

welcomed the assessment, noting that a “green” assessment had been retained for each of RA1, S4 and WL7.

The board was also provided with a letter from the LSB explaining the November assessment, along with the LSB’s full assessment report covering all the regulators. The board discussed the CLSB’s positioning in the sector, as well as the future of the regulatory assessment and the perceived pros and cons of the existing framework. Overall, the board agreed that the most important comparison for the CLSB was between its own past, present and planned performance. The board was proud of what had been achieved since the initial transitional assessment in 2019 and was keen to continue making sustainable, meaningful progress over time.

Kate noted that the LSB expected significant progress to have been made against the remaining “amber” standards by 31 March and this would be a priority area of focus in Q1.

## **8.2 State of the nation report and strategy consultation**

The board was provided with the LSB’s State of Legal Services 2020 report, along with a consultation on the LSB’s mid-term strategy for legal services regulation and 2021-22 Business Plan. Kate summarised the key themes, focus areas and intended projects.

Kate explained that she would be engaging in two events relating to the report and consultation in the coming weeks, which would allow the CLSB to take a view on whether it needed to provide a written response to the consultation.

The board discussed the consultation, including the LSB’s proposed 4.4% budget increase. The board focused particularly on the LSB’s proposal not to review the list of reserved legal activities, as recommended by the CMA. This was disappointing for the Costs Lawyer profession and the board felt the issue warranted more immediate attention. It was agreed that Kate should raise this during the stakeholder events.

## **8.3 Other workstreams**

Kate reported that publication of the LSB’s new Practising Fee Rules had been delayed and these were now expected to be available in late January.

Kate also provided feedback on a seminar hosted by the LSB for the CEOs of the regulators to discuss the LSB’s approach to oversight regulation. The board was provided with a letter from Matthew Hill following up on issues raised in that discussion. The board noted the concerns of the various regulators that had been raised in that forum.

# **9 STAKEHOLDER UPDATES**

## **9.1 ACL Council meeting minutes**

The board discussed the minutes of ACL Council meetings held in September and November 2020. Board members noted that limited progress had been made on a number of key issues. The Non-Lay NEDs had contacts on the Council, which might provide a useful board-level touchpoint to help the CLSB understand the barriers to pushing certain issues forward.

Section 4 of the November minutes was of particular interest, as it provided some indication of ACL's current thinking around increasing membership and student numbers. It was noted that the promised consultation on those issues had not yet been received from the ACL Chair.

## **9.2 Work updates**

Updates were provided in relation to:

- a presentation given by Kate at a recent ACL Legal Aid Group seminar on regulatory priorities and the (then upcoming) CPD changes;
- the Legal Ombudsman's (LeO's) consultation on its budget and business plan;
- difficulties with a LeO determination relating to jurisdiction in a complaint against a Costs Lawyer who worked in an unregulated firm.

The board discussed how the last item highlighted that the current poor service quality and delays within LeO were having a real impact on consumers of costs services. It also showed a lack of understanding within LeO of the regulatory framework applying to Costs Lawyers in unregulated businesses.

The board agreed that Kate should make contact with LeO about refresher training on aspects of the Costs Lawyer market, but not until LeO has stabilised the scheme and reduced staff turnover. The board reiterated the importance of a well-functioning route for the resolution of disputes, not least as a differentiating factor between the regulated and unregulated parts of the costs market.

## **10 OPERATIONAL MATTERS**

### **10.1 Review of practising certificate renewals process**

Jacqui reported that the new online process for practising certificate renewals was successfully implemented in November. The board was provided with a comprehensive report assessing the new process against five key measures (cost, resource implications, user feedback, data security and data quality). The report also provided statistics on the level and nature of renewals and terminations for the year.

The board congratulated the team on the success of the project and discussed the risks, controls and next steps identified in the report. The Non-Lay NEDs reported that the process was much easier to navigate than previously. The board was particularly pleased to see that the new process had brought the organisation closer to the profession in discrete and unforeseen ways. The board also hoped the process had improved the perception of the CLSB as a modern and forward-looking regulator.

Overall, the board felt it was a significant achievement to take the new process from conception to implementation in under a year, and thanked Jacqui for her diligence in thinking through the operational aspects. The board approved the follow-up work for 2021 as outlined in the report.

## **11 PUBLICATION**

### **11.1 Confirmation that papers can be published**

The board agreed that all board papers for the meeting should be published, other than those noted on the agenda for the reasons stated.

***Action: Publish board papers on website in accordance with agenda notations.***

## **12 AOB**

On behalf of the board, Stephanie conveyed her thanks to Steve for his many years of dedicated service to the CLSB – this being his last meeting as Chair – and reflected on Steve’s successes in leading the organisation over seven years. Kate passed on a message of thanks and well wishes from the former Vice Chair of the board, Gillian Milburn.

## **13 NEXT SCHEDULED QUARTERLY MEETING**

When: Wednesday 21 April 2021 at 10.30am

Where: TBC

There being no further business, the Chair declared the meeting closed.

.....  
Chair

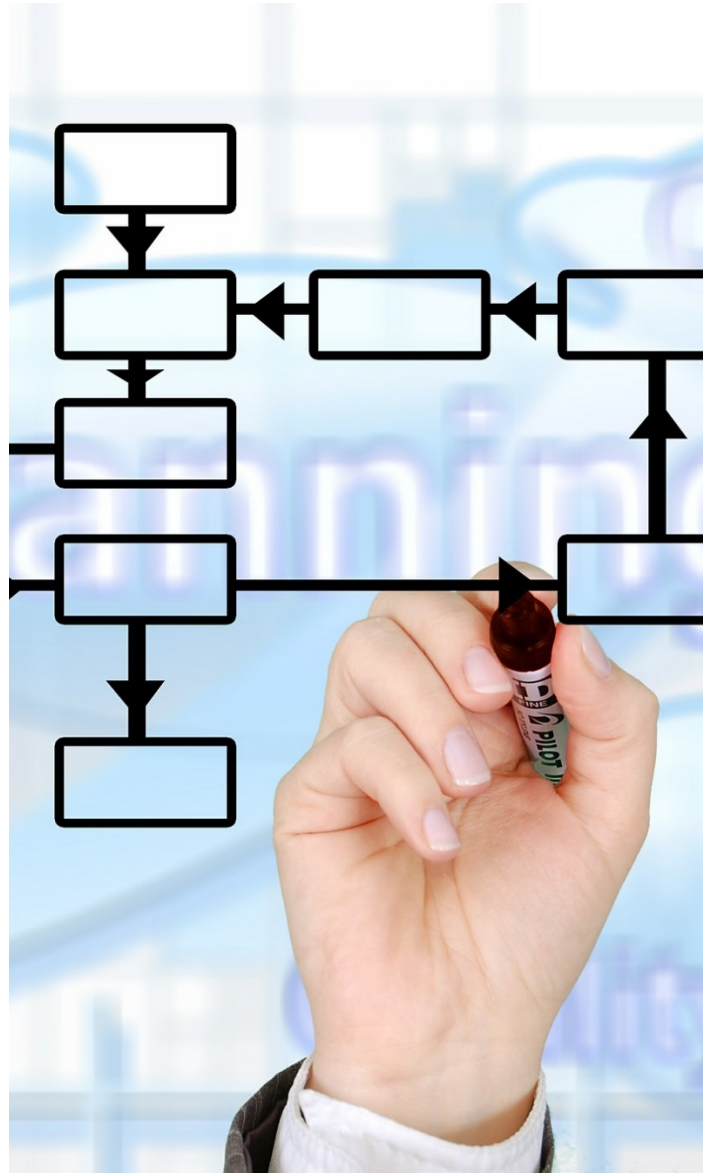
## Related documents

Item	Document	Publication location (CLSB website)
2.1	Board minutes (20 October 2020)	About us ⇒ Our board
3.2	Performance Indicators updated for 2021	About us ⇒ Strategy and governance
4.1	Incoming Chair biography	About us ⇒ Our board ⇒ Individual board members
6.1	Risk registers	About us ⇒ Strategy and governance
7.2	Guidance note on ATE insurance	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.3	Recognition of European Professional Qualifications Rules	For Costs Lawyers ⇒ Foreign qualified Costs Lawyers
7.4	CPD webpage	For Costs Lawyers ⇒ CPD
Item	Document	Publication location (other)
7.5	CMA review of market study recommendations	Government website <a href="#">here</a>
8.1	Updated regulatory performance assessment (November 2020)	LSB website <a href="#">here</a>
8.2	State of Legal Services 2020 report	LSB website <a href="#">here</a>
8.2	Strategy and business plan consultation	LSB website <a href="#">here</a>
9.2	Business plan and budget consultation	LeO website <a href="#">here</a>

# Business Plan 2021 Q1 board update

## April 2021

## Costs Lawyer Standards Board



CLSB



# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	Work with ACL Training to consider whether improvements are required to the Training Rules, informed by learnings from the first year of the refreshed Costs Lawyer Qualification.	<b>In train (expected – Q4)</b> Achieved: <i>Work is well underway on the new competency framework, which will provide evidence to underpin changes to our Training Rules later in the year.</i> Outstanding: <i>Completion of the proposed framework, consultation, and translation of the framework into the course structure and outcomes.</i>
2.	Update the Guidance Notes in the Costs Lawyer Handbook that were not subject to review following the 2019 Handbook Audit.	<b>In train (expected – Q3)</b> Achieved: <i>Three updated guidance notes will be put to the board for approval at this meeting.</i> Outstanding: <i>There are three further guidance notes to be reviewed in order to complete this priority. They are scheduled to be looked at during Q2 and Q3.</i>
3.	Develop new guidance that draws together themes identified across various aspects of our work, such as: <ul style="list-style-type: none"> <li>• guidance for unregulated employers of Costs Lawyers;</li> <li>• guidance on closing down a practice.</li> </ul>	<b>Pending (expected – Q3)</b> <i>Themes for these new guidance notes have been logged. Work will start on their production in Q2.</i>
4.	Carry out an initial evaluation of our revised approach to Continuing Professional Development (CPD) – informed by feedback and enquiries from the profession and other stakeholders – and produce targeted additional support materials where a need is identified.	<b>Achieved (Q1)</b> <i>We captured learnings from the launch of our new CPD regime by tracking email enquiries, feedback and questions raised at our Virtual Q&amp;A session held in February. Those learnings allowed us to supplement our CPD supporting materials (particularly our website FAQs) and informed our approach to developing the new supervision framework for the regime (priority 8). The next touchpoints for further evaluation will be during PC renewals in November and then during the first audit in 2022, which may lead to additional improvements next year.</i>

5.	Review the regime for accrediting Costs Lawyers to provide CPD training, to assess whether the accreditation criteria and the approach to implementation remain fit for purpose.	<p><b>Near completion (expected – Q2)</b></p> <p><i>Achieved: We have implemented new Accredited Costs Lawyer Rules, reviewed the accreditation criteria and updated the information we seek from applicants (both when they first apply for accreditation and upon renewal). We have developed a new supervision framework for the scheme, as an adjunct to our planned supervision project (priority 8).</i></p> <p><i>Outstanding: New webforms implementing the changes to the application process are in development and will go live in Q2, following the board’s approval of the supervision framework in April. We sought feedback from those Costs Lawyers choosing not to renew their accreditation this year and any follow-up work required from that feedback will also be carried out in Q2.</i></p>
6.	Consider our diversity and inclusion initiatives against the Legal Services Board’s characteristics of a well-performing regulator to identify and address any gaps in our approach.	<p><b>In train (expected – Q4)</b></p> <p><i>Achieved: We launched a new diversity survey alongside the 2021 PC renewal application. We have analysed and published initial data from that survey. To further improve response rates, we have identified a way to integrate diversity questions into the PC application itself going forward. We have also compiled a set of actions aimed at further improving our data and exploring particular characteristics. We have stepped up our engagement with the regulators’ EDI forum and liaison with the LSB and SRA on diversity.</i></p> <p><i>Outstanding: A comparative data analysis exercise is underway and we expect to publish a more detailed report in Q2. Work to take forward the set of actions for improving our data will commence in Q2. A project to assess options for promoting EDI, and the likely impact of those options, will also launch in Q2. Work on upgrading and testing the PC application forms will continue into Q3, and data protection implications will be worked through in parallel. Wider sector engagement will continue throughout the year.</i></p>

## Protecting the interests of consumers and promoting professional standards

	Initiative	Progress status
7.	Deliver the first year of priority activities in our <a href="#">Consumer Engagement Strategy</a> .	<p><b>Near completion (expected – Q2)</b></p> <p><i>Achieved: We have delivered several initiatives under the first year of the strategy, such as improving our web content, securing improvements to the costs questions in the LSCP tracker survey, and reviewing our regulatory return questions relating to client profiles. We have refreshed our client survey and have asked Costs Lawyers who reported having lay clients to send the survey directly to those clients. A project is underway with Community Research to conduct detailed interviews with consumers who have used Costs Lawyers. Our draft consumer outcomes framework will be put to the board for consideration at this meeting.</i></p> <p><i>Outstanding: Finalisation and publication of the consumer outcomes framework. Completion of the Community Research project. A final report against the first year priorities will be provided to the board in July.</i></p>
8.	Develop our approach to supervision by: <ul style="list-style-type: none"> <li>• planning and documenting an updated CPD audit programme under the new CPD Rules;</li> <li>• implementing a structured audit of complaint procedures;</li> <li>• formalising our “point of complaint” targeted supervision activities, drawing evidence from our new database;</li> <li>• updating our Supervision Policy to capture the above.</li> </ul>	<p><b>Near completion (expected – Q2)</b></p> <p><i>Achieved: We have developed new supervision frameworks, using a consistent approach and format, for supervising compliance with the Accredited Costs Lawyer Rules, our guidance on complaints procedures, and the CPD Rules. These will be put to the board for consideration at this meeting.</i></p> <p><i>Outstanding: Finalise the supervision frameworks based on the board’s feedback. Draft a framework for point-of-complaint supervision, and develop a new public-facing Supervision Policy describing our approach, for board approval in July.</i></p>
9.	Take an in-depth look at three key areas in which we have identified risks of poor consumer outcomes, namely: <ul style="list-style-type: none"> <li>• under-insurance;</li> <li>• handling of client money; and</li> </ul>	<p><b>In train (expected – Q4)</b></p> <p><i>Achieved: We have completed our review in relation to Costs Lawyers handling client money and updated our guidance note accordingly, with the decision-making process being recorded in a published board decision note.</i></p>

	<ul style="list-style-type: none"> <li>communication of complaint procedures,</li> </ul> <p>in order to:</p> <ul style="list-style-type: none"> <li>improve our understanding of the risk profile across the profession in each area, making use of our new audit and data capture processes;</li> <li>ensure we accurately record these risks, for transparency and monitoring purposes;</li> <li>assess whether our current regulatory arrangements in these areas appropriately mitigate the risks, informed by evidence from consumer complaints;</li> <li>consider whether there are more proportionate, targeted or innovative ways to address the risks, particularly in the context of market developments and technological change.</li> </ul>	Outstanding: <i>Work on the other areas will commence in Q2.</i>
10.	Consider how we can improve consumer information in relation to the regulatory status of the organisations in which Costs Lawyers practise.	<b>Pending (expected – Q3)</b> <i>Work on this priority is scheduled to start in Q2.</i>
11.	Test the efficacy of the new interim suspension order (ISO) powers in our Disciplinary Rules and Procedures, based on our early experience of disciplinary proceedings in which the imposition of an ISO was considered.	<b>Pending (expected – Q4)</b> <i>No opportunities have yet arisen to test the ISO power in practice. We will wait for a suitable case to present itself during the year, but this is of course a contingent piece of work.</i>

## Modernising our organisation

	Initiative	Progress status
12.	Measure the success of the electronic practising certificate renewal process implemented in 2020 against five key metrics (cost; resource implications; user	<b>Achieved (Q1)</b> <i>We carried out a comprehensive review of the new electronic PC renewal process against the five metrics. A</i>

	feedback; data security; and data quality) and identify any adjustments needed for the 2021 renewal period.	<i>report was considered by the board in January. A number of improvements to the PC application form and database have been identified through that process and a workplan has been put in place to deliver those improvements before PC renewals begin again in November.</i>
13.	<p>Deliver the second phase of our digital workplan, including:</p> <ul style="list-style-type: none"> <li>• reviewing how we use IT for financial management;</li> <li>• creating e-forms for processes other than annual practising certificate renewals;</li> <li>• building add-on functionality for the Costs Lawyer database, informed by learnings from the 2020 practising certificate renewal process.</li> </ul>	<p><b>In train (expected – Q3)</b></p> <p><i>Achieved: The first version of our new financial management system has been built and used to produce the Q1 finance report for board feedback. E-forms are in development and the new client survey e-form has been successfully launched.</i></p> <p><i>Outstanding: All our application forms will be available as updated e-forms by the end of Q2. The next version of the Costs Lawyer database, with enhancements informed by learnings from the 2020 PC renewal process, is in the late stages of development. Testing will continue into Q3 up to the PC renewal window opening in November.</i></p>
14.	Review our governance arrangements, including our suite of governance documents, to ensure they provide a robust framework for oversight and accountability and continue to meet the standards of the Corporate Governance Code 2018.	<p><b>Pending (expected – Q4)</b></p> <p><i>Work on this priority is scheduled for H2.</i></p>
15.	Revisit the effectiveness of our new operating structure to identify whether and where further improvements can be made.	<p><b>In train (expected – Q4)</b></p> <p><i>Achieved: Ongoing review of the effectiveness of our operating structure led to the recruitment of additional policy and education resource in early 2021. Our Business Continuity and Disaster Recovery Plan was reviewed in February 2021 to take account of the changes.</i></p> <p><i>Outstanding: We will assess the success of the changes in H2 once they have bedded in. The constitution and remit of the board will be considered as part of the governance review in H2 (priority 14).</i></p>

## INTERNAL WORKING DRAFT

### Good consumer outcomes

The CLSB's Consumer Engagement Strategy, which was first published in January 2020, states as follows in the overview section:

*This strategy will apply from 2020 to 2023, in line with our wider organisational strategy. It will be reviewed annually by the CLSB board during its lifetime. Planned activities will therefore be subject to amendment and development as we obtain further information, test “what works” and build on learnings from previous years.*

In line with this commitment, we are now refreshing our consumer engagement strategy for 2021 and propose that we should do so using a framework of consumer outcomes.

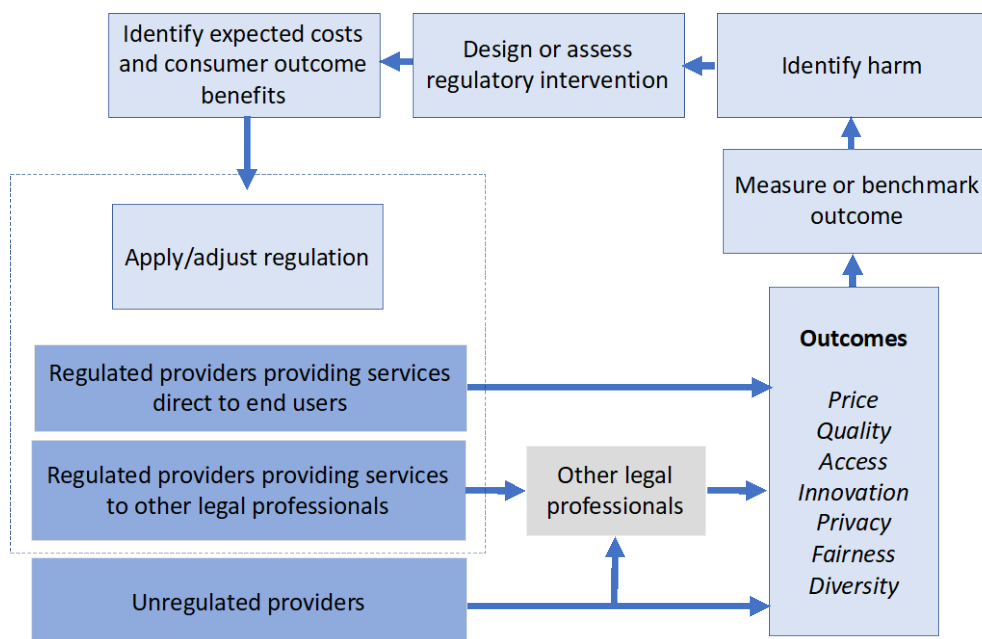
Regulators that have a focus on good outcomes are less inclined to measure success by the imposition of rules and processes, or at the very least critically evaluate these to make sure they have a positive impact on outcomes.

There are many strategic and practical benefits to this shift in emphasis. As a first step, this shift means the CLSB will concentrate on measuring outcomes not outputs – for example, whether consumers understood what price they would pay, not whether a provider has acted in line with price transparency guidance (while of course examining the output, in this example, is also very relevant it is insufficient on its own).

Our focus on consumer outcomes will not only shape our approach to consumer engagement it will feed through into all of our work, and our whole approach to imposing (or removing) regulatory rules.

In this context, ‘consumer’ means the end user of legal services, whether individual consumers or corporate consumers. As our policy work progresses, and we gather more evidence on how consumers use Costs Lawyers, we are likely to refine our definition and may group individual consumers and micro/small business together in terms of our work exploring outcomes.

**Figure one: interaction between measuring consumer outcomes and regulatory interventions**



## What outcomes are we interested in?

The list below, and our initial definitions, are likely to evolve and change over time, but we should be wary of allowing debate about defining outcomes to delay our shift in focussing on them. We believe most of the benefit of outcome focussed regulation is captured by the mind-set of the approach, not the precise definition of the consumer outcome.

### Price

Consumers:

- pay a competitive price for access to services;
- understand the cost of services before they buy them;
- have a meaningful choice in terms of the price they wish to pay.

### Quality

Consumers:

- experience good quality services;
- have a meaningful choice in terms of the quality they wish to buy.

### Access

Consumers:

- can easily access the services they need;
- have a meaningful choice of services.

### Innovation

- Consumers benefit from innovative ways to supply services, and innovation reduces prices and drives up quality and accessibility.

### Privacy

- Data and information is handled in a way that consumers expect in order to protect their privacy.

### Fairness

- Access and availability of services is fair: particularly for consumers who may be vulnerable or disadvantaged.
- Providers treat consumers fairly: in all of their dealings with them, including in particular:
  - during disputes and complaints;
  - ensuring no conflicts of interest in the way services are provided disadvantage the end client.

### Diversity

- Diversity in the profession is sufficient to meet consumers' needs and so supports the delivery of good consumer outcomes.
- Consumers accessing services do not experience a worse outcome depending on their characteristics (either as an individual or in the transaction).



## Measuring outcomes: the foundations

The CLSB's work on measuring outcomes will be continuous, and will evolve and become more sophisticated as it progresses, but the steps now in progress – and which together shape our approach to consumer engagement – are set out below:

Outcome	Initial exploration	What we're doing now/next
<b>Price</b>	<p>What is the price consumers pay to access Costs Lawyers?</p> <p>How are these prices changing over time?</p> <p>Do consumers think they get good value for money?</p> <p>Do consumers understand the price they will pay?</p> <p>How do consumers access and use information on price before making a choice?</p>	<p>Consumer surveys and research – underway</p> <p>Programme of interviews and desk research to benchmark structure of prices – next step</p>
<b>Quality</b>	<p>Do consumers think the services they bought were good quality?</p> <p>[Other quality indicators to be defined in line with work being undertaken in the wider sector]</p>	<p>Consumer surveys and research – underway</p> <p>Policy work to respond to LSB quality indicators discussion paper – in progress</p>
<b>Innovation</b>	<p>What innovative services exist in other legal and professional services sectors, that are not apparent in the services of Costs Lawyers?</p> <p>What barriers to innovation do Costs Lawyers experience?</p>	<p>Early learnings from the SME focus group in the competency framework project – complete</p> <p>Programme of interviews and desk research to benchmark state of innovation – next step</p>
<b>Privacy</b>	<p>What are consumers' expectations, and is there any evidence these are not being met?</p>	<p>Programme of desk research – it is likely that consumers' expectations can be inferred from existing research in other sectors</p>
<b>Fairness</b>	<p>What is the incidence of vulnerability markers in the users of Costs Lawyers services? (individual characteristics and in the transaction)</p> <p>Conflicts of interest is a priority area, although is unlikely to be an</p>	<p>Consumer surveys and research – complaint data analysis underway</p> <p>Policy analysis on the likelihood of conflicts of interest arising, and gap analysis of safeguards in place</p>



	area that we can measure directly	
<b>Diversity</b>	<p>Is diversity in the profession sufficient to meet consumers' needs and ensure good outcomes?</p> <p>Benchmarking of diversity characteristics of consumers accessing Costs Lawyer services</p>	<p>Examination of data from the 2020 diversity survey – near completion</p> <p>Active programme of work to establish meaningful comparisons and benchmarks – in progress</p> <p>Consumer surveys and research – underway</p>

### References used in formulating the proposed approach

NAO, performance measurement by regulators, 2016. [Link](#).

NAO, regulating to protect consumers, 2019. [Link](#).

FCA, principles for customers, last updated 24/3/2021. [Link](#).

FCA, business plan 2020-21, page 12, prioritising outcomes. [Link](#).

Oxera, why we need to consider holistic consumer outcomes, 2018. [Link](#).

BEIS, modernising consumer markets, 2018. [Link](#).

Ofcom, making markets work well for consumers, 2019. [Link](#).

CMA, review of progress in legal services sector, 2020. [Link](#).

## Refreshed CLSB client survey

(web version available at: <https://clsb.info/forms-costs-lawyer-client-survey/>)

### About You

Client Survey

Introduction

About You

About Your Experience

Submission

Your First Name

Forename

Your Surname

Last name

Your business name (if relevant)

Your business name (if relevant)

Which of the following best describes you?

✓ Please select one

A private individual

A micro or small business, charity or trust

A larger business, charity or trust

A solicitor or other professional acting on behalf of someone else

Other (please tell us)

### Micro-enterprise, small business, small charity, small trust

A **micro-enterprise** is a business which:

Employs fewer than 10 people; and

Has annual turnover or a balance sheet that does not exceed £2 million

A **small business** is a business which:

Is not a micro-enterprise;

Has an annual turnover of less than £6.5 million; and

Has a balance sheet total of less than £5 million, or employs fewer than 50 people.

A **small charity** or small trust is:

A charity with an annual income of less than £6.5 million and trusts with a net asset value of less than £5 million.

Collecting information that will enable us to categorise segments of consumers in the future

Which of the following best describes you?

A private individual



Unsure which one to pick?

Thinking about your circumstances at the time you needed a Costs Lawyer, tick any of the following that were applicable:

- ☐ I had never used a lawyer before
- ☐ I had never dealt with the legal problem I was facing before
- ☐ I had a physical disability that impacted on my day to day activities
- ☐ I had a health problem that impacted on my day to day activities
- ☐ I had recently experienced a life event, or life changing event, I found stressful
- ☐ I was experiencing significant financial hardship
- ☐ English was not my first language and this made dealing with a legal problem difficult
- ☐ There were circumstance that meant I found dealing with the legal problem I had particularly difficult
- ☐ I prefer not to say

Vulnerability characteristics – we intend more detailed exploration to be in follow up where possible

Which category below includes your age?

Please select one



What is the highest level of education you have completed or the highest degree you have received?

Please select one



What is your ethnic group?

Choose one option that best describe:



## About Your Experience

### Client Survey

Introduction

About You

About Your Experience

Submission

Basic information about  
the drivers of need

Why did you consult a Costs Lawyer? (Tick all that apply)

- ☐ I needed help with understanding or challenging an invoice
- ☐ I needed help with drafting court documents about legal costs
- ☐ I needed help in presenting my / my client's arguments about costs in court
- ☐ I needed help in understanding the rules about legal costs and the risks I / my client faced

I needed help with something else relating to legal costs (please tell us what below)

Other (please describe)

What was the underlying legal problem that resulted in costs? (Tick all that apply)

- ☐ Family law matter (such as divorce)
- ☐ Conveyancing
- ☐ Housing, landlord or tenancy matter
- ☐ Accident or injury
- ☐ Civil court case

Other (please describe)

Other (please describe)

Collecting basic indications of outcomes on access, knowledge of price and cost, value for money, and quality.

How did you find your Costs Lawyer?

Please select one

Please rank how easy or difficult you found it to secure the services of a Costs Lawyer (1 is very difficult, 10 is very easy)

Please select one

Before you agreed to take the services of a Costs Lawyer, did you:

Know the price that would be charged (for example per hour)?

Yes/No

Have a good estimate of the overall cost?

Yes/No

Was the overall cost (compared to when you agreed to take the services)

Please select one

Please rank the services and/or advice you received in terms of value for money? (1 is very poor value for money, 10 is excellent value for money)

Please select one

Please rank the services and/or advice you received in terms of quality? (0 is very poor quality, 10 is excellent quality)

Please select one

Did you feel that you had cause for complaint about your Costs Lawyer?

Please select one

If you raised a formal or informal complaint, did that resolve the matter to your satisfaction?

Yes/No

## Submission

### Client Survey

Introduction

About You

About Your Experience

Submission

Would you like to make any additional comments about the service provided by your Costs Lawyer?

You would very much help us in our work if you would allow us to contact you if we have follow-up questions. May we do that?

Yes/No

Email Address



Email Address

Phone number



Phone number

*If you enter an email address here we will send you a copy of your survey submission.*

---

# Reserves Policy

---



**Updated: 21 April 2021 (version 4)**

---

**Costs Lawyer Standards Board**

**CLSB**  
|||



---

## Purpose

1. The Costs Lawyer Standards Board (CLSB) holds financial reserves to ensure it has sufficient capital to respond appropriately to risks and maintain business continuity. This policy sets out the CLSB's current approach to accumulating and managing reserves.

## Type of reserves

2. The CLSB primarily holds uncommitted reserves. Uncommitted reserves are not allocated or ring-fenced for a specific purpose, and they are not required to meet "business as usual" annual expenditure. The CLSB may hold committed reserves from time to time, as set out at paragraph 16 below. When this policy was last reviewed, the CLSB had no committed reserves.
3. The CLSB's uncommitted reserves are divided into two categories based on the sources from which they are derived, namely practising fee reserves and share capital reserves.
4. Share capital reserves reflect the value of the share capital paid up by the CLSB's parent company and sole shareholder, The Association of Law Costs Draftsmen Limited (trading as the Association of Costs Lawyers (ACL)).
5. Practising fee reserves are derived from the practising fees paid annually by regulated Costs Lawyers.<sup>1</sup>
6. Practising fee reserves are used only in fulfilment of the CLSB's regulatory functions and for the permitted purposes set out in the Legal Services Board's Practising Fee Rules 2021.

---

<sup>1</sup> The CLSB's income is generated almost exclusively from practising fees and therefore all budget items, including transfers to reserves, are met with practising fee funds. The CLSB generates a de minimis amount of income from accrediting Costs Lawyers to provide CPD activities. Given the small size and unpredictable nature of that income, it is not allocated to any particular item of expenditure and is not included in budgeted income.



---

## Holding reserves

7. The CLSB holds its practising fee reserves and share capital reserves in designated accounts, separate from each other and separate from the CLSB's operating (current account) funds.
8. The CLSB, through its officers and employees, has exclusive management and control of its reserves. All reserve accounts are held in the CLSB's name. ACL may not access the CLSB's practising fee reserves nor direct how they are used.
9. Reserves may be invested (for example, in interest bearing accounts) at the discretion of the CLSB's executive. However, any investment will be very low risk and will ensure funds are kept sufficiently liquid to be called upon if required.

## Reserves target

10. Reserves are accumulated up to a target level, which is set to insure against reasonable risks without unnecessarily inflating costs.
11. The CLSB's target level of reserves is one year's operating expenditure, which equates roughly to one year's gross income from annual practising certificate fees (net of any contribution to reserves). When this policy was last reviewed, the reserves target was £172,000.
12. In setting the target, the CLSB was mindful that its target is higher than the level recommended by the Legal Services Board as a proportion of annual expenditure. This is a consequence of the CLSB's size; the target is not high in absolute terms. A minimum level of reserves is needed to ensure financial resilience in the face of major risks, many of which create the same liability for a small regulator as they do for a larger one. The reserves target is set at a level that will ensure the CLSB can deliver its full regulatory remit and/or meet its obligations in the event that a major risk materialises.

- 
13. The reserves target is a total target for all uncommitted reserves. The level of share capital reserves is maintained at £15,000. The reserves target is therefore reached through the accumulation of practising fee reserves above this level year on year.
  14. To achieve the reserves target, the CLSB will make provision in its annual budget for a contribution to reserves each practising year until the target is met. The CLSB may also make contributions to reserves from any underspend on its annual budget.

## Risks mitigated through reserves

15. Reserves are necessary to ensure adequate financial resources at all times, providing a cushion against the materialisation of reasonably foreseeable risks. The CLSB's reserves target has been set at a level that is adequate to insure against, but is not disproportionate to, the following major strategic risks:
  - (i) Risks OP1, OP3 and OP4 in the CLSB's risk register.
  - (ii) An unexpected decrease in practising fee income (because, for example, an economic crisis restricts Costs Lawyers' ability to pay practising fees or the Legal Services Board refuses to approve the annual practising fee).
  - (iii) The CLSB ceasing to exist or being unable to act as an approved regulator under the Legal Services Act 2007 for a reason not covered by risk OP4 (with potential costs including redundancy, contract terminations, LSB and Legal Ombudsman levies which are paid one year in arrears, accounting and Companies House liabilities).
  - (iv) Involvement in litigation (for example, a decision of the CLSB being challenged by way of judicial review, an action for damages being brought by or against the CLSB or injunctive relief being sought for a breach of the Legal Services Act 2007).
  - (v) Duplication of staffing costs in the event of long term absence.
16. In addition to insuring against risks, reserves may be used to meet one-off items of expenditure that cannot be met appropriately through an increase in the

---

practising fee for the relevant year. Such items of expenditure might include, for example, the cost of implementing significant new systems or processes, responding to legislative changes or purchasing substantial assets. Where plans are made to use reserves in this way, the relevant funds will be ring-fenced as committed reserves.

17. The CLSB will consider the extent to which any major strategic risks are insurable. The CLSB will balance the cost and availability of insurance against the cost to the regulated community of accumulating reserves.

## Review of this policy

18. This policy will be reviewed by the CLSB's board annually and when the reserves target has been achieved.

## **RESERVES POLICY**

### **Costs Lawyer Standards Board**

**Effective Date: 22 January 2020**

#### **Purpose of this policy**

This policy sets out the current financial operating reserve policy of the Costs Lawyer Standards Board (CLSB). It was initially agreed by the CLSB on 21 October 2015 and has been reviewed to ensure it is current and fit for purpose on the effective date above.

#### **Financial position of the CLSB**

The CLSB's income is generated through annual Costs Lawyer practising certificate fees. The CLSB may look to the Association of Costs Lawyers (ACL) for financial support as the approved regulator named under the Legal Services Act 2007. However, it is desirable for the CLSB to be financially stable in its own right, in order to promote regulatory independence from the profession's representative body and to ensure business continuity regardless of ACL's financial standing.

#### **Operating reserves**

Operating reserves are considered by the CLSB to be monies not required to meet "business as usual" annual expenditure. Reserves do not include the paid-up share capital of £15,000 nor other financial liabilities provisioned for in the annual accounts, even though funds to meet such liabilities may be held in the reserves account for administrative purposes.

#### **The need for operating reserves**

Operating reserves are deemed necessary to ensure adequate financial resources at all times, providing a cushion against unexpected events. Unexpected events identified by the CLSB which would affect an annual budget resulting in operating reserves being drawn upon include:

1. An unexpected drop in Costs Lawyer practising certificate fee income (for example, because numbers leaving the profession exceed new entrants by a margin that is greater than anticipated).
2. The CLSB ceasing to exist or being unable to act as an approved regulator under the Legal Services Act for any reason (with potential costs including redundancy, contract terminations, LSB and LeO levies which are paid one year in arrears, accounting and Companies House liabilities).
3. Involvement in litigation (for example, a decision of the CLSB being challenged by way of judicial review, an action for damages being brought by or against the CLSB or injunctive relief being sought for a breach of the Legal Services Act).
4. Increased staffing costs in the event of long term absence.

Reserves may also be used to meet one-off items of expenditure, which are foreseen or planned, but which cannot be met solely by an increase in the practising certificate fee for the relevant year. Such items of expenditure might include, for example, the cost of

implementing significant new systems or processes, responding to legislative changes or purchasing substantial assets.

**Operating reserves target**

The CLSB's reserves target is one year's operating expenditure, which equates roughly to one year's gross income from annual practising certificate fees.

**How the CLSB will achieve its reserves target**

The CLSB will make provision in its annual budget for a contribution to reserves each practising year until the target is met. In addition, the CLSB will continue to build its financial reserves from any underspend on its annual budget.

**Mitigation of potential calls on reserves**

The CLSB will consider whether any of the risks identified are insurable. However, the CLSB will balance this against annual insurance costs and the potential risk of an insurer refusing to accept a claim thus leaving the CLSB exposed.

**Investment of operating reserves**

The CLSB will consider appropriate avenues for investing its reserves. Any investment will be very low risk and will ensure funds are kept sufficiently liquid to be called upon if required.

**Review of this policy**

This policy will be reviewed by the CLSB board on a needs be basis and when the financial reserves target has been achieved.

END

## COSTS LAWYER STANDARDS BOARD LTD

### RISK REGISTERS

As at 20 January 2021

#### 1. RISK SCORING

##### (i) Nature of risk

Our operational risks are categorised as:

- Legal
- Financial
- Operational continuity
- Capacity
- Reputational
- Stakeholder

Our reputational risks are categorised as having the potential to impact one or more of the following regulatory objectives:

- Protecting and promoting the public interest.
- Supporting the constitutional principle of the rule of law.
- Improving access to justice.
- Protecting and promoting the interests of the consumer.
- Promoting competition in the provision of services.
- Encouraging an independent, strong, diverse and effective legal profession.
- Increasing public understanding of the citizen's legal rights and duties.
- Promoting and maintaining adherence to the professional principles, namely: independence and integrity; proper standards of work; acting in a client's best interests; duty to the court; confidentiality of client affairs.

##### (ii) Gross risk: Impact x Probability

Impact (I)	Probability (P)
The consequences of an event occurring. The event will have: <b>Negligible (1):</b> Very little consequence <b>Slight (2):</b> Some consequences, but none serious <b>Moderate (3):</b> Some consequences which could be serious <b>Serious (4):</b> Serious consequences <b>Severe (5):</b> Very serious consequences	The likelihood of an event occurring. The event is: <b>Low (1):</b> Very unlikely to occur <b>Medium low (2):</b> Unlikely to occur <b>Medium high (3):</b> Likely to occur <b>High (4):</b> Very likely to occur

IMPACT	5	5 YELLOW	10 YELLOW	15 RED	20 RED
	4	4 GREEN	8 YELLOW	12 YELLOW	16 RED
	3	3 GREEN	6 YELLOW	9 YELLOW	12 YELLOW
	2	2 GREEN	4 GREEN	6 YELLOW	8 YELLOW
	1	1 GREEN	2 GREEN	3 GREEN	4 GREEN
		1	2	3	4
		PROBABILITY			

(iii) Adequacy of controls

Descriptor	Score	Description
<b>Fully effective</b>	5	Controls are well designed for the risk and address the root causes. The Executive and Board are comfortable that controls are effectively applied, monitored and assured
<b>Substantially effective</b>	4	Most controls are designed correctly and are in place and effective. Some more work to be done to improve operating effectiveness, or doubts about operational effectiveness and reliability
<b>Partially effective</b>	3	Controls in place but are not sufficient to fully mitigate risk. There are potential weaknesses in the application of controls and limited assurance or reporting available
<b>Largely ineffective</b>	2	Significant control gaps. Either controls do not treat root causes or they do not operate at all effectively
<b>None or totally ineffective</b>	1	No credible control and limited confidence in the application or oversight of risk activity

## 2. OPERATIONAL RISK REGISTER

<b>Logged by board:</b> 6/4/2011	<b>Reference:</b> OP1	<b>Risk score: I(5) x P(4) = 20</b>
<b>Risk to operation</b>	<b>Changes to the profession impact CLSB viability as more leave than enter the profession</b>	
<b>Nature</b>	Financial, operational continuity	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Increase in fixed costs (from April 2019): MoJ announcement of implementation of fixed costs on cases up to £100k.</li> <li>• Coronavirus (from May 2020): Results of our coronavirus impact survey suggest a significant minority of Costs Lawyers are concerned about their ability to carry on practising; positive impacts for some, e.g. through delays to costs reforms and increased workload.</li> <li>• Whiplash reforms (from January 2021): could reduce work in low value PI claims, but may also increase complexity of instructions.</li> <li>• Link to OP3 in terms of numbers entering the profession.</li> <li>• Actual net attrition of 12 practitioners over 2020.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Monitor impact on the profession via impact assessment surveys, including coronavirus impact surveys in Q2 2020 and Q1 2021.</li> <li>• Respond to proposals/consultations to help stakeholders understand the Costs Lawyer market and ensure policy developments are in the public interest.</li> <li>• Implement regulatory arrangements that support safe innovation and diversification, to promote ongoing competition and choice.</li> <li>• Pursue recommendations in the Mayson report for expansion of costs regulation.</li> <li>• Mitigate risks around route to entry – see OP3.</li> <li>• Review of historic termination and reinstatement data carried out in 2020 and new processes put in place for communicating with potential returners.</li> <li>• Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>	Monitor reasons for leaving the profession at PC renewal and respond to new factors. Impact of coronavirus on regulated numbers being kept under close review.	



<b>Logged by board:</b> <b>13/1/2015</b>	<b>Reference:</b> <b>OP2</b>	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk to operation</b>	<b>The CLSB's organisational structure is not sufficient to ensure business continuity</b>	
<b>Nature</b>	Operational continuity, capacity, reputational	
<b>Evidence of risk</b>	Being a small organisation, institutional knowledge and operational capacity of the CLSB rests with a small number of individuals.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Assessment of continuity risks in light of coronavirus (including retaining core functions in the absence of a key staff member).</li> <li>• Increase in policy support resource from February 2021.</li> <li>• Updated Business Continuity and Disaster Recovery Plan adopted in July 2020 following restructure and reflecting changes for coronavirus.</li> <li>• Move to a paperless organisation, including via electronic processes and cloud storage.</li> <li>• Minimisation and logging of paper archives, with joint access.</li> <li>• Joint signatories to bank account.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	High	
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>• Rehousing or safe destruction of paper archives over coming years.</li> <li>• Knowledge transfer of all systems, processes, data and knowhow between staff and into internal policies and manuals.</li> </ul>	

<b>Logged by board:</b> <b>25/7/2017</b>	<b>Reference:</b> <b>OP3</b>	<b>Risk score: I(5) x P(3) = 15</b>
<b>Risk to operation</b>	<b>There are insufficient numbers of newly qualified Costs Lawyers such that regulated numbers fall to an unsustainable level</b>	
<b>Nature</b>	Reputational, financial, operational continuity	
<b>Evidence of risk</b>	<p>There is only one means of entry into the profession (three-year course) and one provider (ACLT).</p> <ul style="list-style-type: none"> <li>• In 2017, due to financial concerns, the CLSB authorised ACLT's course to the end of 2020 for current trainees only (i.e. a suspension on new intakes). The course reopened to new students in January 2020 but ACL has indicated that the course might not run again in 2021.</li> <li>• In 2017, CLSB considered applying to the government apprenticeship scheme, but concluded this was not an option.</li> <li>• In early 2019, CLSB applied to the LSB for approval of an alternative qualification that would remove historical barriers to entry, but following feedback the application was ultimately withdrawn.</li> </ul>	

	<ul style="list-style-type: none"> <li>Coronavirus may impact the number of new qualifiers, due to assessment delays and reduced employer funding.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>Work within the parameters of the new Protocol agreed with ACLT.</li> <li>Nurture relationship with ACLT to ensure early notification of any future issues and ensure current learners are protected.</li> <li>Implement regulatory arrangements within the current framework that modernise the three-year qualification as far as possible.</li> <li>Retain one year's operating budget as reserves.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	High
<b>Actions/status</b>	<ul style="list-style-type: none"> <li>Monitor success of course in 2020.</li> <li>Reconsider longer-term approach to competency, taking learnings from the SQE experience.</li> </ul>
<b>Commentary</b>	There is a general shift across the legal services regulators toward outcomes-based qualifications, but difficulties faced by other regulators in implementing those qualifications mean this is likely to be a longer term solution for the CLSB.

<b>Logged by board:</b> 24/10/17	<b>Reference:</b> OP4	<b>Risk score:</b> I(5) x P(1) = 5
<b>Risk to operation</b>	<b>ACL, named in the Legal Services Act 2007 as approved regulator (role undertaken by CLSB under delegation), becomes insolvent</b>	
<b>Nature</b>	Regulatory, operational continuity, reputational (for CLSB and the profession)	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>Coronavirus may impact regulated numbers or Costs Lawyers' ability to pay membership fees.</li> <li>Inherent risk for any regulatory body acting under the delegated authority of its parent company.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Open dialogue with ACL to give us early warning of financial issues.</li> <li>Ongoing engagement with the LSB's contingency planning initiative.</li> <li>Retain one year's operating budget as reserves.</li> </ul>	
<b>Control adequacy</b>	3	
<b>Priority area of risk</b>	Low	
<b>Actions/status</b>	Financial instability in 2017-2018 appears to have subsided.	

<b>Logged by board:</b> 24/1/18	<b>Reference:</b> OP5	<b>Risk score:</b> I(4) x P(1) = 4
<b>Risk to operation</b>	<b>Failure to comply with data protection obligations</b>	
<b>Nature</b>	Legal, financial, reputational	

<b>Evidence of risk</b>	Increased risk under new GDPR arrangements, including a significant increase in the level of fine that can be imposed. CLSB handles the personal data of Costs Lawyers, employees, agents and (to a limited extent) some members of the public.
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Data protection compliance review carried out in Q4 2019, leading to adoption of a new Data Protection Manual and implementation of updated processes for ensuring compliance in 2020.</li> <li>• Updates to IT systems with a focus on data security.</li> </ul>
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low
<b>Actions/status</b>	Updates to IT systems ongoing throughout 2020.

<b>Logged by board:</b> 23/1/19	<b>Reference:</b> OP6	<b>Risk score: I(4) x P(3) = 12</b>
<b>Risk to operation</b>	<b>Breakdown in communications between any of ACL, ACL Training and the CLSB</b>	
<b>Nature</b>	Operational continuity, reputational	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• Previous difficulties in securing ACL/ACLT engagement with CLSB, due to lack of resource or appetite.</li> <li>• Governance and oversight complications as between ACL and ACLT in relation to the Costs Lawyer Qualification.</li> <li>• A breakdown of any of the bilateral relationships could adversely impact the qualification and the CLSB.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Nurture a constructive relationship with new ACL Chair.</li> <li>• Contingency planning for operational areas that require ACL input.</li> <li>• New MOU and OP agreed with ACL in 2020.</li> <li>• Work with the LSB to help ACL engage with its regulatory obligations as a designated body under the new IGRs.</li> <li>• Extend engagement beyond ACL Chair to foster understanding within the Committee as a whole.</li> <li>• Work within the parameters of the new Protocol agreed with ACLT.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Medium	
<b>Actions/status</b>		

### 3. REGULATORY RISK REGISTER

<b>Logged by board:</b> <b>23/01/2020</b>	<b>Reference: R1</b>	<b>Risk score I(4) x P(1) = 4</b>
<b>Risk</b>	<b>The professional standards set by the CLSB do not achieve positive consumer outcomes or, where poor consumer outcomes cannot be prevented, the CLSB is unable to take action</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Protecting and promoting the interests of consumers. Professional principle: Proper standards of work. Professional principle: To act in the best interest of the client.	
<b>Evidence of risk</b>	There is limited evidence of actual risk, although there are theoretical risks that must be controlled, for example: <ul style="list-style-type: none"> <li>• Risk of complaints processes not being properly communicated: While the very low level of complaints about Costs Lawyers to the CLSB or LeO could suggest that either few complaints arise at first-tier or those that are raised are handled well, this may also suggest that consumers are unaware of how to complain to their Costs Lawyer.</li> <li>• Risk of under-insurance: Costs Lawyers are free to select an insurance provider from the open market, as this promotes competition and keeps fees at a sustainable level, but this may carry a risk of a Costs Lawyer not purchasing the right type of cover.</li> <li>• Risks from lack of supervision: The shift to remote working during 2020 could have long-term consequences for proper supervision and training of junior Costs Lawyers. As we do not regulate entities, we cannot address this at firm/system level.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New Practising Rules, CPD Rules and Disciplinary Rules and Procedures implemented in 2020, including to increase the deterrent effect of financial penalties.</li> <li>• Guidance subject to systematic review from 2019, with all Handbook content due to have been reviewed by the end of 2021.</li> <li>• Filing requirements with practising certificate applications (evidence of insurance, complaints procedures).</li> <li>• Targeted questions in client survey.</li> <li>• Supervision of first tier complaints through self-reporting.</li> <li>• 2021 Business Plan includes priority projects in relation to: (i) three key risk areas; (ii) approach to supervision; (iii) developing guidance for</li> </ul>	

	employers of Costs Lawyers, which will cover emerging risks from remote working.
<b>Control adequacy</b>	4
<b>Priority area of risk</b>	Low – no evidence of risk having materialised to date
<b>Actions/status</b>	2021 Business Plan priorities to be completed by the end of the year.

<b>Logged by board: 31/10/2011</b>	<b>Reference: R2</b>	<b>Risk score: I(5) x P(2) = 10</b>
<b>Risk</b>	<b>Costs Lawyer (not working for SRA regulated firm) accepting client monies</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest Professional principle: To act with integrity Professional principle: To act in the best interests of the client	
<b>Evidence of risks</b>	<ul style="list-style-type: none"> <li>As Costs Lawyers are not permitted to handle client monies, they will not have systems in place to ensure proper handling in the event they do inadvertently or deliberately accept monies in breach of our rules.</li> <li>No evidence from client survey or complaints that a Costs Lawyer has handled client monies. However a complaint in Q1 2020 suggested there is scope for poor client outcomes even where a Costs Lawyer does not handle client money directly.</li> <li>Pending whiplash reforms could increase the prevalence of direct instructions – including complex instructions – from lay clients with a likely increase in the desire for funds on account.</li> </ul>	
<b>Controls</b>	<ul style="list-style-type: none"> <li>Covered under Principle 3.6 of Code of Conduct. Associated guidance updated in 2020 following a targeted review, including to promote the use of TPMAs to safely deal with client monies.</li> <li>Client survey asks: “Did you send any monies to your Costs Lawyer other than in payment of an invoice?”</li> <li>Information sharing arrangement with LeO in relation to complaints involving client monies that fall within CLSB jurisdiction.</li> </ul>	
<b>Control adequacy</b>	4	
<b>Priority area of risk</b>	Medium	
<b>Actions/status</b>		

<b>Logged by board:</b> <b>24/07/2019</b>	<b>Reference: R4</b>	<b>Risk score: I(4) x P(2) = 8</b>
<b>Risk</b>	<b>CLSB cannot generate sufficient evidence about the consumer dimension of the Costs Lawyer market, resulting in regulatory arrangements that are misaligned to consumer need</b>	
<b>Risk to objectives</b>	Regulatory objective: Protecting and promoting the public interest. Regulatory objective: Increasing public understanding of citizens' legal rights and duties.	
<b>Evidence of risk</b>	It has historically proven difficult to generate statistically significant data on the consumer experience with the Costs Lawyer market. Engagement with client surveys is low, as are complaint volumes, making traditional methods of data capture insufficient. It is intended that the Legal Choices project will provide additional data and insights into the way consumers interact with the market, although there have been threats to the success of that project including withdrawal of the Bar Standards Board.	
<b>Controls</b>	<ul style="list-style-type: none"> <li>• Consumer Engagement Strategy covering the period of our mid-term organisational strategy (2020 – 2023), establishing workstreams for building consumer-related evidence base.</li> <li>• Data sharing arrangements with LeO in relation to complaints about Costs Lawyers.</li> <li>• Participation in the Legal Choices Governance Board, which oversees the project's risk register, to identify early warning signs that the project will not deliver as expected.</li> </ul>	
<b>Control adequacy</b>	4 – a forward plan is in place, as set out in the Strategy, but work will be ongoing for some time	
<b>Priority area of risk</b>	Medium, so long as we remain on target to deliver Strategy	
<b>Actions/status</b>	Implement Consumer Engagement Strategy.	

<b>Logged by board:</b> <b>20/10/2020</b>	<b>Reference: R5</b>	<b>Risk score: I(4) x P(3) = 12</b>
<b>Risk</b>	<b>CLSB cannot promote all aspects of diversity within the profession given the small size of the regulated community and trainee population</b>	
<b>Risk to objectives</b>	Regulatory objective: Encouraging an independent, strong, diverse and effective legal profession.	
<b>Evidence of risk</b>	<ul style="list-style-type: none"> <li>• There is only one route of entry into the profession and, in some years, there may be no new students accepted through that route (linked to OP3).</li> </ul>	

	<ul style="list-style-type: none"> <li>• Statistically the size of the profession makes it more difficult to strive for a composition that is reflective of wider society.</li> <li>• The LSB has provisionally assessed existing data that we capture on the diversity of the profession as insufficient.</li> </ul>
<b>Controls</b>	<ul style="list-style-type: none"> <li>• New diversity and inclusion survey developed for roll out with practising certificate applications in Q4 2020.</li> <li>• New reporting framework for the Costs Lawyer Qualification being agreed with ACL Training.</li> <li>• Targeted diversity initiatives planned for 2021.</li> <li>• Seeking opportunities to collaborate with other regulators and organisations in this area.</li> </ul>
<b>Control adequacy</b>	2 – plans are in place but it will take time to implement and then assess these during 2021
<b>Priority area of risk</b>	Medium, so long as we are able to deliver planned initiatives
<b>Actions/status</b>	Assess impact of new data capture methodology in early 2021. Delivery of controls during 2021.

# Costs Lawyer Standards Board

21 April 2021

## Impact of coronavirus on Costs Lawyers 2021 survey results

In May 2020, we surveyed Costs Lawyers for the first time about the [impact of the coronavirus pandemic](#) on their practice. In February and March 2021, we ran a comparative survey to obtain an up-to-date picture of how coronavirus is affecting the profession and to see whether early predictions were accurate. 20% of Costs Lawyers contributed to the survey (compared to 21% in 2020), including practitioners working in solicitors' firms (38% of respondents), in costs law firms (35%), as sole practitioners or consultants (22%) and in-house (4%).

**In general, the Costs Lawyer profession is faring very well.** While nearly a third of Costs Lawyers predicted a fall in instructions during 2020, only a small minority had less work to do than before the crisis. **Over a third of Costs Lawyers reported an increase in their workload.** The level of concern about future impacts of the pandemic has reduced across the board, but there are still pockets of the profession that are worried about mid-term viability, including legal aid costs practitioners. **Nearly half of all Costs Lawyers expect to work remotely most or all of the time after the pandemic.**

This report contains a detailed analysis of the survey results. The tables and graphs show data for all respondents, while the statistics in the accompanying text relate to discrete parts of the profession. If you would like more information about the survey or our findings, please email [enquiries@clsb.info](mailto:enquiries@clsb.info). Readers should be aware of limitations in the survey data due to sample sizes for some categories. These are explained on page 11.




# Personal impacts during 2020

We asked Costs Lawyers which of the following impacts they (personally) experienced during 2020, that they believed to be caused mainly by the coronavirus pandemic.

This column shows the proportion of respondents to our May 2020 survey who indicated they had already experienced the relevant impact at that time, or believed they were likely to experience it during 2020.

This column shows the proportion of respondents to our follow-up survey, conducted in early 2021, who reported having actually experienced the impact during 2020.



Impact on individual Costs Lawyers	Prediction for 2020	Actual for 2020
Working predominantly from home when they weren't before	80%	72%
Embracing new technologies or innovations	80%	58%
Having less work to do than they had before	31%	14%
Having more work to do than they had before	26%	34%
Being furloughed	4%	7%
Losing their job	2%	0%
Having difficulties providing a full or timely service to their clients	23%	6.5%

**56%** of Costs Lawyers working in costs law firms embraced new technologies in 2020 despite 83% predicting that they would. Costs Lawyers in solicitors' firms also over-predicted, with 70% embracing new technologies compared to 84% who thought it was likely they would. Conversely, 43% of sole practitioners reported embracing new technologies, up from 35% who predicted they would.

**23%** of sole practitioners had less work in 2020 than they did before, compared to 48% who predicted they would, while another 23% had more work. Across all other practice types and work areas, there were more Costs Lawyers reporting an overall increase in their workload than those reporting a decrease. The biggest differential was for those in solicitors' firms, where 40% had more work while just 4% had less.

**8%** of legal aid Costs Lawyers reported being furloughed during 2020, along with 8% of those working in personal injury or clinical negligence (PI/CN) costs. This fell to just 4% of those working in commercial litigation costs.

# Practice area impacts during 2020

We asked Costs Lawyers which of the following impacts they, their clients or their organisation experienced during 2020.

This column shows the proportion of respondents to our May 2020 survey who indicated they were quite concerned or very concerned about the relevant impact being experienced in their main area of costs practice during 2020.

This column shows the proportion of respondents to our follow-up survey, conducted in early 2021, who reported having actually experienced the impact during 2020.

Impact experienced	Prediction for 2020	Actual for 2020
The number of client instructions falling	30%	24%
Disputes taking longer than usual to conclude	29%	35%
Delays in clients paying fees	26%	21%
Difficulties supervising colleagues due to home working	13%	24%
Their firm or business ceasing to trade	14%	0%
Inability to carry on practising as a Costs Lawyer	2%	-
None of the above impacts	-	36%

64% of respondents indicated that they, their clients or their organisation (as relevant) experienced at least one of the impacts that we asked about. Sole practitioners fared best, with 47% experiencing none of the impacts, compared to 40% of those working in solicitors' firms and just 23% of those in costs law firms reporting the same.

42% of Costs Lawyers specialising in PI/CN costs saw disputes taking longer than usual to conclude. This compared to 36% for those specialising in commercial litigation costs and 25% for legal aid Costs Lawyers.

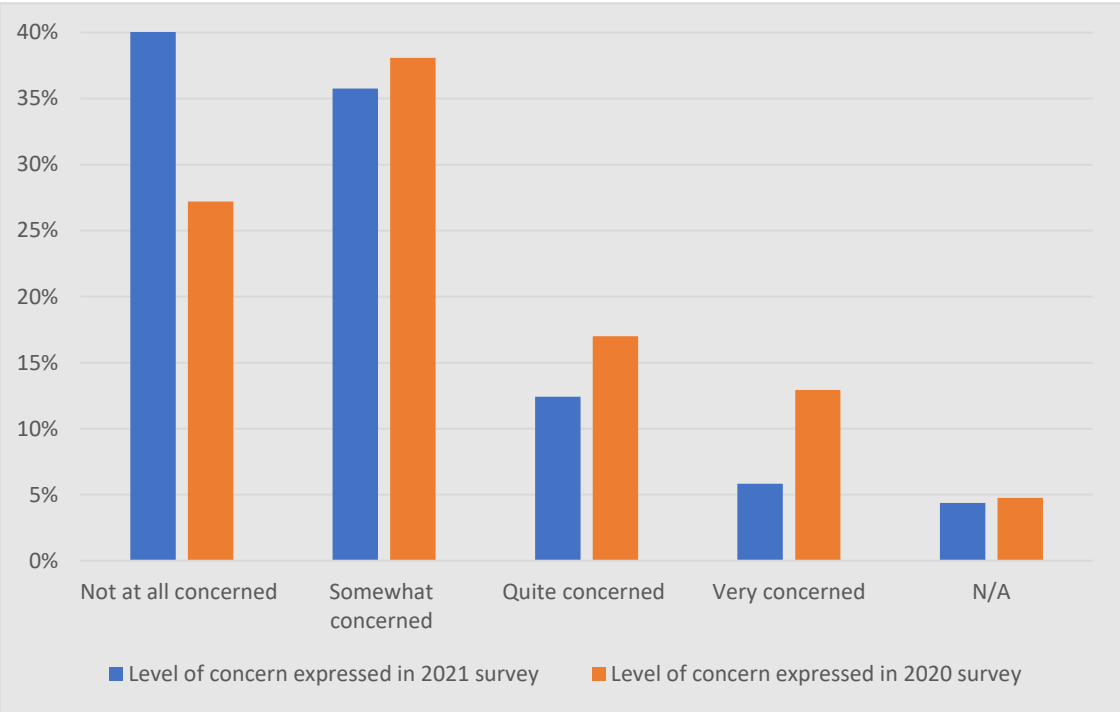
48% of Costs Lawyers specialising in commercial litigation costs experienced difficulties supervising colleagues due to home working, compared to 24% of PI/CN specialists and 4% of legal aid Costs Lawyers.

Former Costs Lawyers who ceased practising at the end of 2020 were not included in the survey. However, our data shows that 1% of Costs Lawyers did not renew their practising certificate in 2021 for reasons relating to the coronavirus pandemic. Reasons included ill health, unemployment, full-time childcare, bereavement, uncertainty and lack of available CPD.

# Practice area impacts in the short and medium term

We asked Costs Lawyers how concerned they were about the following impacts of coronavirus over the next 12 to 36 months on their own area of costs practice.

The number of client instructions falling



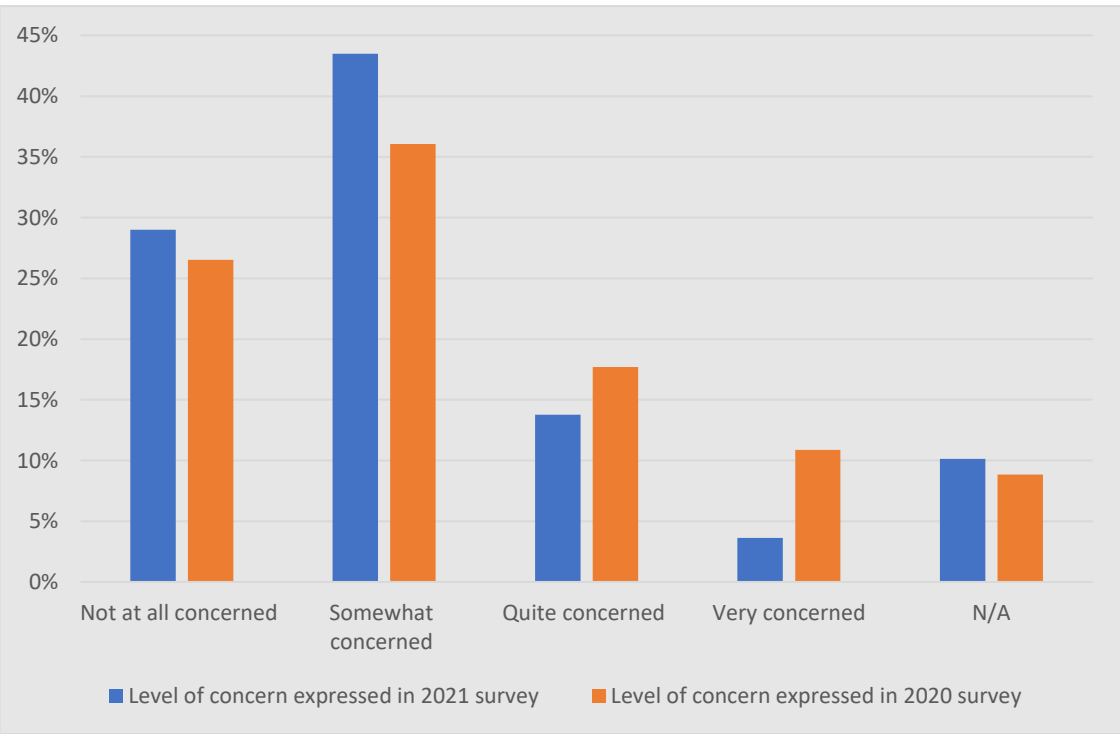
22%

fewer Costs Lawyers working in PI/CN costs are now quite concerned or very concerned that client instructions will fall than a year ago. 39% of PI/CN specialists reported being quite or very concerned about falling instructions in our 2020 survey, compared to just 17% now.

56%

of Costs Lawyers working in solicitors' firms are now not at all concerned about falling client instructions in the next 12 to 36 months, compared to 37% of sole practitioners and 29% of those working in costs law firms.

Disputes taking longer than usual to conclude



31%

of Costs Lawyers working in PI/CN costs are not at all concerned about litigation delays going forward, marginally above those specialising in legal aid costs (29%) and commercial litigation costs (28%). This is despite PI/CN specialists being the most likely group to experience delays in 2020.

36%

of Costs Lawyers working in costs law firms remain quite concerned or very concerned about delays in receiving their fees over the next 12 to 36 months; exactly in line with the results of our 2020 survey. 20% of sole practitioners are similarly concerned, down from 24% when we asked them in 2020, while only 4% of those working in solicitors' firms remain concerned, down from 13% previously.

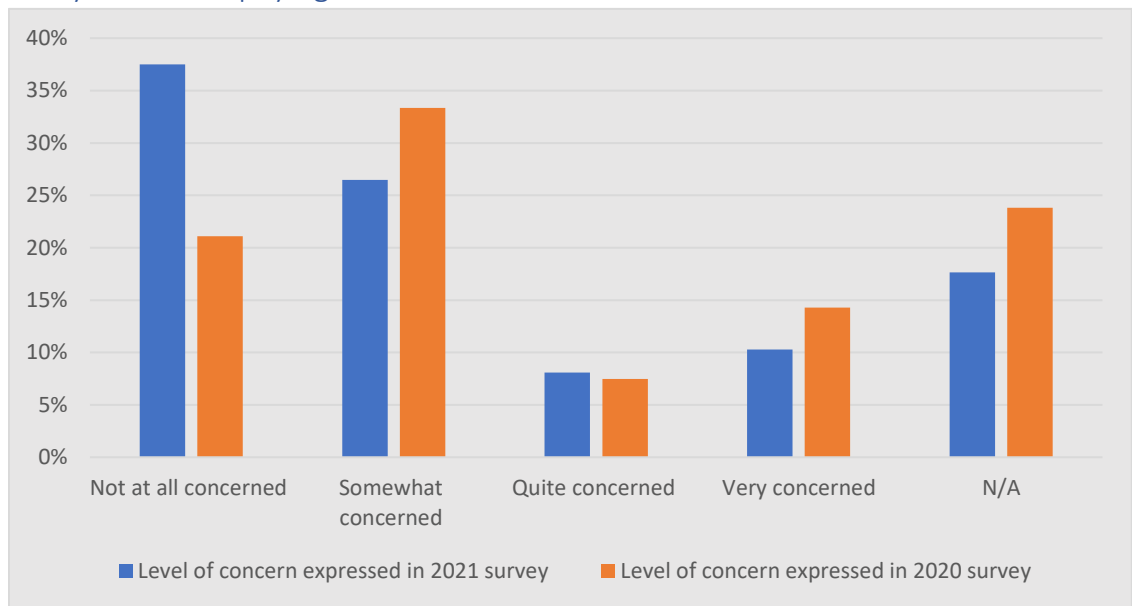
12.5%

of legal aid Costs Lawyers are now very concerned about their firm or business ceasing to trade in the next 12 to 36 months. This is higher than for those specialising in PI/CN costs (4%) or commercial litigation costs (0%).

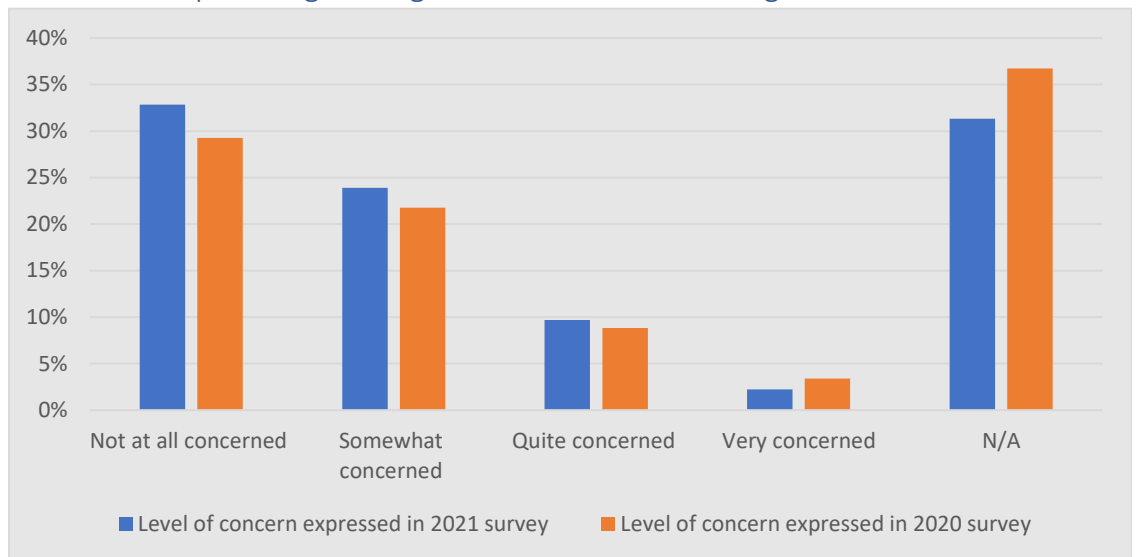
11%

of Costs Lawyers working in costs law firms remain very concerned about the viability of their business in the medium term, compared to 15% who were very concerned in 2020. This compares to 0% of sole practitioners (down from 8% in 2020) and 2% of those in solicitors' firms (down from 6%).

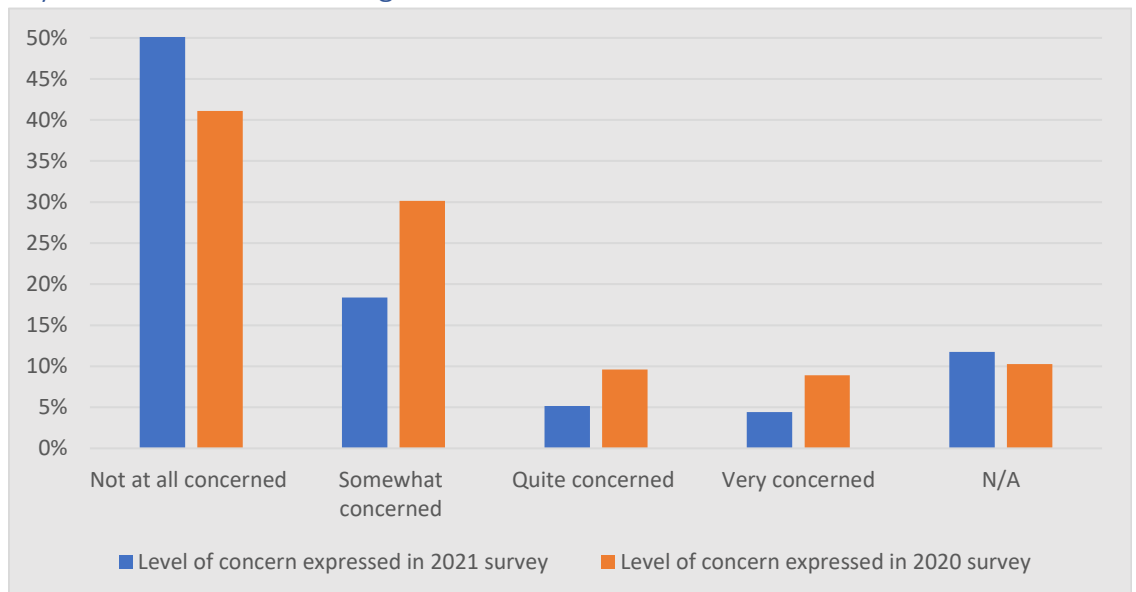
#### Delays in clients paying fees



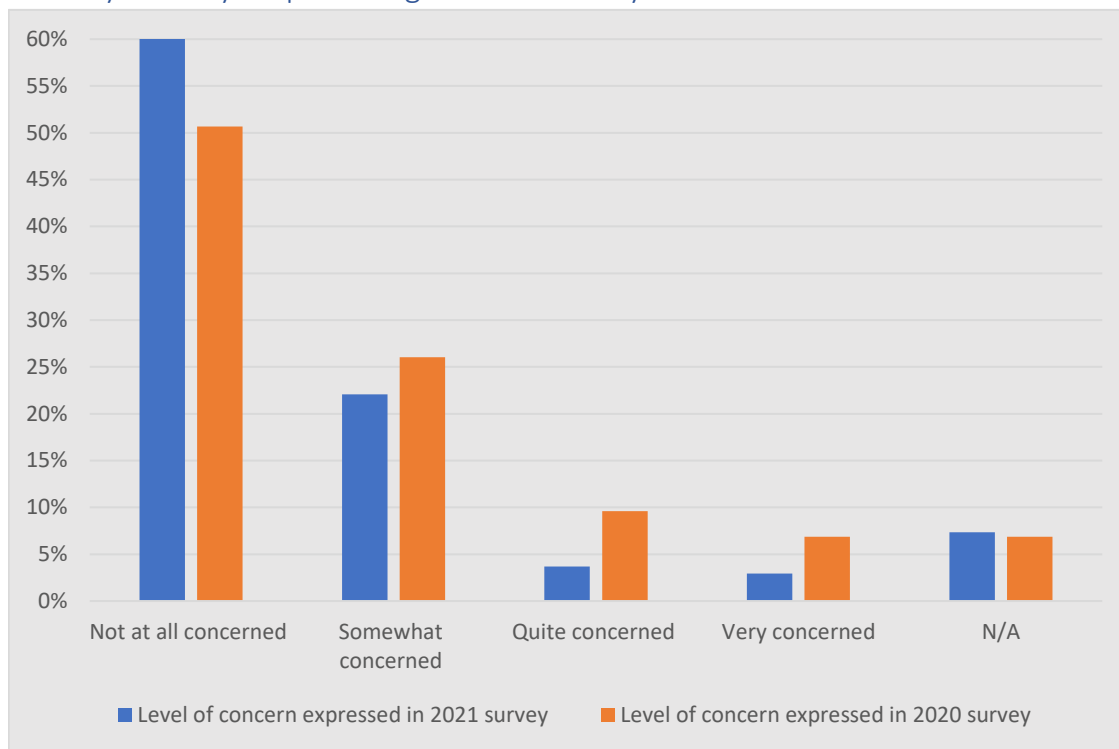
#### Difficulties supervising colleagues due to home working



#### My firm or business ceasing to trade



## Inability to carry on practising as a Costs Lawyer



25%

of legal aid Costs Lawyers are now quite concerned or very concerned about being able to carry on practising over the next 12 to 36 months, up from just 4% when we asked them in 2020. This compares to 1% of PI/CN costs specialists (down from 19% in 2020) and 0% of those working in commercial litigation costs (down from 20%).

## Remote working

We asked Costs Lawyers about their expectations for remote working following the pandemic.

By remote working, we mean working from home or a personal office as distinct from a commercial office space.

We asked Costs Lawyers whether they expect to continue working remotely when it becomes safe to return permanently to an office environment.

Amount of remote working	Before the pandemic	Expectation for after the pandemic
Working remotely most or all of the time	23%	45%
Working remotely some (but not all) days each week	18%	28%
Working remotely from time to time on a flexible basis	25%	17%
Little or no remote working	34%	7%
No expectations either way at this stage	-	4%

**70%** of sole practitioners already worked remotely most or all of the time prior to the pandemic.

**10%** of Costs Lawyers working in costs law firms expect to do little or no remote working when it is safe to return permanently to the office. This drops to 7% for sole practitioners, 4% for those in solicitors' firms and 0% for in-house Costs Lawyers.

**45%** of Costs Lawyers working in solicitors' firms expect to work remotely most or all of the time after the pandemic. This compares to 63% of sole practitioners, 33% of those in costs law firms and 20% of in-house Costs Lawyers.

---

## General impacts of coronavirus on Costs Lawyers

We again asked Costs Lawyers to tell us about any other impacts of coronavirus (positive or negative) on their practice, their clients or their ways of working. Following our 2020 survey, we drew out five themes from the responses to this question.

### Themes from May 2020

<b>Theme 1:</b> The profession has embraced technological change more quickly than it would have done in the absence of coronavirus.	<b>Theme 4:</b> There is some concern about decreasing instructions and job security, but not across the board.
<b>Theme 2:</b> There are advantages to working from home, but there are challenges too. Generally, balance and flexibility are preferable.	<b>Related to theme 4:</b> Pressures facing clients in the current environment are having knock-on effects for Costs Lawyers.
<b>Theme 3:</b> Sole practitioners are insulated from some of the practical impacts of coronavirus, given their existing ways of working.	<b>Theme 5:</b> Courts are trying to keep up with technological change, but there is still uncertainty, delay and practical challenges (particularly in relation to detailed assessment hearings).

Responses to the same question in 2021 provided up-to-date insights, particularly around theme 1 (technological change), theme 2 (working from home) and theme 4 (volume of work). These themes have been updated on the next page, along with a sample of comments from our 2021 survey.

In relation to theme 5, there were reports of continued delays to costs hearings and other challenges within the court system, but not to the same extent as we saw early in the pandemic.

---

**Updated theme 1:**  
On the whole,  
technological  
change has had a  
positive impact,  
and it is here to  
stay.

*"Whilst it has been a very difficult 12 months and some of those difficulties continue, we must look to some good coming out of the way things are run and embrace the changes that prove positive for clients and the business."*

*"Although there were initial issues with the technology and adjustments, it is now positive from the point of view of flexibility."*

*"[I've] definitely become more tech savvy."*

*"Clients have become more open to allowing remote access to their systems which I hope will continue."*

*"Remote conferences with clients and Counsel and online hearings work very well, provided one has adequate broadband. Very positive."*

*"Has required a big investment in additional hardware purchases."*

---

*"I prefer working remotely, my productivity has increased significantly."*

*"It has shown my employer that people working from home is beneficial and, most importantly, can be achieved on a large scale."*

*"Much prefer working from home overall."*

*"I miss my monthly meetings with colleagues. Although we do one through Zoom, it's not the same so we feel more fragmented as a team."*

*"I miss the camaraderie of the office desperately."*

*"It has demonstrated travel is not necessary to meet face to face, but it makes establishing personal relationships and friendships more difficult."*

*"The effect on mental health as a result of furlough."*

*"I am concerned about the imposition of homeworking on the ability to informally share information or to address queries internally in the company."*

*"It's a shame that there is now limited finances to run an office and working from home will be permanent for me."*

*"Fewer options for BD [business development]."*

*"I miss every day face to face interaction with everyone."*

**Updated theme 2:**  
Remote working  
brings considerable  
benefits, but we  
must address its  
impact on  
relationships and  
wellbeing.

**Updated theme 4:**  
Concerns about decreasing instructions and job security have largely been defrayed, but we are now seeing other kinds of pressure on Costs Lawyers' working arrangements.

*"Cases dropped during 2020 but have picked up at the beginning of 2021. The nature of my practice means the work still needs to be costed so we are now dealing with backlogs of work from 2020!"*

*"Those who continue working are picking up files of furloughed colleagues. So individually the employee has as much, if not more, work than before the pandemic, even if overall the business environment is a reduction to instruction referrals."*

*"Covid 19 for me coincided with a change in focus by a major provider of instructions. I now deal with less small cases with the emphasis on larger multi-track matters in their place."*

*"As a costs lawyer within a COP department, provision of work has largely been unaffected."*

*"It made me decide to set up my own business."*

*"My concern is that we are at the end of the process so the impact in fewer instructions to solicitors will hit us in 12 to 24 months' time."*

*"I continued to work full time but my wages were reduced to 70% for a few months and I am now being paid 80% and I have been informed that the wages I have lost will not be given to me at a later date."*

*"It has been quite stressful as the firm has insisted on staying open, with staff coming into the office despite guidelines stating that staff should work from home."*

*"The biggest impact on my earning capacity has been childcare / home schooling commitments."*

---

## Key message for the CLSB still relates to CPD

We asked Costs Lawyers what else the CLSB could do to support them in meeting their professional obligations in the current climate.

In 2020, 18% of survey respondents expressed concern about achieving 12 CPD points in 2020, as required under the CLSB's Continuing Professional Development Rules.

When we asked the same question in 2021, the vast majority of responses again related to Costs Lawyers' ability to obtain CPD remotely. However, the picture was much more positive.

No survey respondents expressed concern about not being able to meet their CPD obligations in 2021. But there is still a clear desire within the profession for signposting to high-quality CPD resources. This issue is explored in more detail on the next page.



## What the CLSB did to help in 2020.

- We changed the way we supervised and enforced CPD requirements in 2020, so Costs Lawyers could obtain all 12 of their required CPD points through online learning activities during the year.
- We worked with service providers to create a catalogue of relevant e-learning opportunities that were available free or at low cost, and secured exclusive discounts for regulated Costs Lawyers.
- We introduced a new CPD regime, applying from 1 January 2021, giving Costs Lawyers more flexibility and choice around their CPD activities.

## Examples of how the profession responded.

*"I panicked a little last year in relation to CPD, but feel that I can manage now."*

*"I think the change in how we are able to achieve CPD is a huge help in being able to select more courses that are relevant to us (not just on costs) and also the way the CPD can be achieved. It has proved that we do not have to spend hundreds and hundreds of pounds on attending conferences ... when you can learn just as much when attending these events remotely. Even though we are a big firm, our Learning and Development team still have budgets and the financial impact of this pandemic will change the way they view how CPD can be achieved in the future ... Thank you for your support."*

*"A new list of providers offering free or low cost CPD points would be great, this was so helpful last year."*

## Costs Lawyers want more online learning opportunities in 2021.

In response to the question of what the CLSB can do to support Costs Lawyers in meeting their professional obligations in the current circumstances, responses included:

*"Please arrange more online webinars to allow us to gain our CPD for the year."*

*"Providing as much information on or opportunities for CPD which can be undertaken safely at a distance."*

*"Database of / links to costs specific CPD including recommended publications."*

*"Provide more online learning for CPD."*

## Other things we can do to help.

Encouraging providers to offer more variety in e-learning activities:

*"Obtaining CPD points proved to a bit of a challenge so I solely relied upon online conferences/webinars and a lot of them covered the same topics."*

Recognising part-hour CPD activities:

*"Consideration to recognising 1/2 CPD points per 30 minutes. For example if training or a seminar is 1 hour 45 minutes, then at present the CLSB recognises 1 point for this activity."*

We will address both of these points within our new CPD regime in 2021.

---

## Endnote: Limitations of the survey data

Readers of this report should be aware of limitations in the survey data. The sample size for certain types of practitioners – particularly those working in-house and those specialising in own-client costs – were inevitably small, due to the small population of Costs Lawyers to draw from in these areas.

While all Costs Lawyers were invited to complete the survey, it is possible that the Costs Lawyers who responded were particularly interested in the survey because they felt personally impacted by coronavirus. This may lead to an overstatement of impact in some areas.

While we have tried to ensure that all Costs Lawyers received the survey, it is possible that some Costs Lawyers might have been furloughed following the CLSB's last communication with them, such that they did not receive the survey. Factors such as this could lead to an understatement of impact in some areas.

Despite these limitations, as for our May 2020 survey the composition of respondents broadly reflected the demographics of the profession as a whole, in terms of both work areas and practising arrangements. The survey therefore provides a helpful indication of where challenges and opportunities might lie for Costs Lawyers in the wake of the pandemic.

## Other resources

For data about how coronavirus is affecting the legal services sector more widely, visit the Legal Services Board's [coronavirus impact dashboard](#).

## Costs Lawyer Standards Board



---

This guidance note is intended to help Costs Lawyers recognise and deal with any conflicts of interest that might arise in relation to their clients.

## What are your obligations?

1. Principle 1 of the Costs Lawyer Code of Conduct requires you to act honestly, professionally and with integrity in all your dealings and not allow yourself to be compromised.
2. Principle 3.1 states: “You must act at all times to ensure the client’s interest is paramount except where this conflicts with 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. A conflict of interest can arise between:
  - your interests and a client’s interests (Own Interest Conflict); or
  - the interests of two or more clients (Client Conflict).

## Own Interest Conflict

4. A Costs Lawyer must not act if there is an Own Interest Conflict. This refers to any situation where your duty to act in the best interests of a client in relation to a matter conflicts with your own interests in relation to that or any related matter.
5. If an Own Interest Conflict arises, there are no exceptions to this prohibition against acting. Obtaining your client’s consent to act will not change the position. Similarly, advising the client to obtain independent advice will not allow you to continue to act once an Own Interest Conflict has arisen.
6. Examples of factors that can give rise to an Own Interest Conflict are set out in the table below. This is not an exhaustive list.

Factor	Example situation
A financial interest of yours or someone close to you.	A client asks you to represent them in costs proceedings against a company in which your spouse/partner owns shares.
A personal or business relationship of yours.	A client asks you to advise on a claim against a relative of yours, a friend of yours, or someone with whom you are involved with in a common financial enterprise.
Your role as an employee.	A client asks for advice in relation to a costs dispute involving your employer or a fellow employee.
Your own conduct.	The wrong advice has been given to the client or the wrong action taken on their behalf, and the client therefore has a potential claim against you. A conflict will not always arise in this situation (provided you have been transparent with the client as to your mistake) but can easily do so. If, say, the client's position in costs proceedings has been prejudiced by you wrongly advising them not to pursue a particular issue, it would be unlikely that you could continue to advise them in those proceedings without a conflict arising between your interests and theirs.

7. In relation to your role as an employee, it will normally be assumed that where the client's interests conflict with your employer's interests then they also conflict with your own interests, and you should therefore not act. If you act for a client whose interests conflict with your employer's, there will be a clash between your obligation to fulfil the terms of your employment contract (for example, requirements to share all information with your employer, to further their interests and to act in good faith towards them) and your duty to act in your client's best interests with undivided loyalty.

---

## Client Conflict

8. The starting point is that you should not act if there is a Client Conflict. This refers to a situation where your separate duties to act in the best interests of two or more clients in the same or a related matter directly conflict.
9. In many cases the existence of a direct Client Conflict will be clear cut and you will not be able to act. Examples of such situations include:
  - Providing costs services to opposing parties in a costs dispute or other litigation.
  - Providing costs services to both an instructing solicitor and a third-party funder in negotiating funding terms for the same proceedings.
10. However, there will be less clear cut cases, particularly where the interests of two clients are in conflict regarding wider aspects of a matter, but the limited nature of your retainer as a Costs Lawyer means that you are nevertheless able to act for both. Indeed, there might be significant benefits for clients in instructing a single Costs Lawyer.
11. For example, the interests of joint defendants to proceedings might be in conflict regarding the apportionment of damages and costs, but those defendants could jointly instruct you in relation to total quantification of costs. As long as you are clear in your client care letter that you are not instructed to advise on the issue of how costs are to be apportioned, then it might well be appropriate to act for multiple parties.
12. Similar situations could arise where, for example:
  - A defendant has more than one insurer and there is a dispute as to which insurer is responsible for a claim. The same considerations as above would apply to allow you to act on a limited retainer for the insurers collectively.
  - There is a dispute about how an estate or trust fund is to be distributed, and costs incurred in resolving the dispute and making the distributions are to be paid from the fund. You might be able to advise parties that were in conflict

---

during the dispute if the only remaining issue is the level of costs that were properly incurred.

13. In any such case you should be clear with your clients about the nature and terms of the retainer, and what issues are included and excluded.

## Determining whether there is a Client Conflict

14. Whenever you consider that there is a risk of Client Conflict you should ask yourself the following questions:

***First, are you able to act independently in all the clients' best interests?***

15. You will want to consider factors such as:
  - The amount of negotiation needed between the clients on costs issues. The more there is to negotiate, and the less the clients have agreed in advance, the more likely it is that the clients will need separate representation.
  - Whether there is any imbalance in bargaining power between the clients, or risk of undue duress, such that separate representation or advice is required.
  - Whether you can put measures in place to effectively manage any risk of a conflict arising during the course of a matter.
  - Whether the benefits outweigh the risks of you acting (including the risk of inadvertent disclosure of confidential information).

***Second, have you obtained each of the clients' informed consent to act for all of them, including as to what information can be shared between them?***

16. Principle 7.1 of the Code of Conduct is relevant here. It states: "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."

- 
17. If you are not able to answer both these questions clearly in the affirmative, then you are likely to find yourself acting in conflict, and should refuse to act (or cease acting) for one or more of the clients.
  18. Note that a conflict can also arise in a related matter. For example, clients may be involved in two sets of proceedings arising out of the same circumstances.

## Costs Lawyers working in SRA authorised firms

19. If you work in a firm that is authorised and regulated by the Solicitors Regulation Authority (SRA), you will also be bound by the SRA Code of Conduct for Firms. This Code might prevent you from acting in circumstances where you have no personal Client Conflict (because you are acting for only one client) but where the firm itself has a conflict due to representation of another client by the firm. You should follow the guidance on the SRA website on conflicts of interests in such situations.
20. Similar principles will apply if you are employed by a firm that is authorised by one of the other legal services regulators.

## Costs lawyers working in non-authorised firms

21. If you are working in a firm that is not authorised by any of the legal services regulators – such as a partnership or limited company formed by Costs Lawyers – then although you are bound as an individual by the conflict rules in the CLSB Code of Conduct there will be no equivalent firm-wide prohibition.
22. Thus, whilst you may be prevented personally from acting for clients A and B whose interests are in conflict, it may be possible for you to act for client A and for someone else in the firm to act for client B.
23. However, you will still only be able to act for client A if:
  - You are able to act in their best interests (Principle 3.1).



- 
- You are able to protect client A's confidential information from client B and from the Costs Lawyer that is acting for client B (Principle 7.1). This will require the use of information barriers within the firm, which will effectively remove any real risk of information exchange. Information barriers might include:
    - systems to identify the potential confidentiality issue;
    - separate teams handling the matters, at all levels including non-fee-earning staff;
    - separate servers (and printers) so that information cannot be cross accessed;
    - information being encrypted and password protected;
    - individuals in the firm being aware of who else in the organisation is working on the respective matters so they know who they can and cannot discuss the matter with;
    - appropriate organisational policies and training for staff.
  - You are open with the clients about the situation and have obtained their informed consent to act (Principle 1).
  - There is no Own Interest Conflict arising from the fact that your firm or employer is acting for the other client. For example, if the relationship with client B is so important to the firm that you cannot in reality act independently for client A.

## What do we mean in this guidance by the client's informed consent?

24. When this guidance refers to "informed consent", it means that the client must be informed of the risks of you continuing to act for them and the alternatives of seeking separate representation or advice, and must give their consent in that context. You are, of course, entitled to point out any benefits of you continuing to act. The client must also understand the extent to which their confidential information needs to be shared with the other client(s) in order for you to advise all clients properly, and understand the impact of that, and then give their consent where necessary.

- 
25. It is good practice to ensure that the client's informed consent is provided in writing so that you can demonstrate compliance with your regulatory obligations.

## Client Conflict and former clients

26. Principle 3.1 applies to current or prospective clients. So, if the interests of clients A and B are in conflict in a matter, Principle 3.1 does not automatically prevent you from acting for new client B where you previously acted for client A in a related matter.
27. However, your duty to protect client A's confidential information (Principle 7.1) survives the end of the retainer. Therefore, if you obtained information through acting for client A (or otherwise received information that is confidential to client A), and that information is relevant to a matter involving client B, your duty of confidentiality to client A is likely to clash with your duty to use your knowledge to act in client B's best interests.
28. In this situation, unless you can obtain client A's informed consent to disclose the relevant information to client B, you cannot personally act for client B. However it may be possible for another Costs Lawyer in your firm to act for client B if measures are put in place to protect client A's information such that there is no real risk of disclosure to client B (see paragraphs 19 to 23 above).

**END**

## **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.



---

## In this guidance note

The purpose and scope of this guidance .....	3
Your obligations .....	3
Key principles to encourage engagement with the client .....	5
Vulnerable consumers .....	6
Essential information to be provided in a CCL.....	7
Contact details .....	7
Scope of work .....	8
Fees .....	8
Likely timescale.....	9
Provision of other required information .....	9
Service levels .....	10
Complaints.....	10
Execution .....	10
Other information to be provided either within the CCL or by including a separate document .....	11
A note on data protection.....	12
Pro bono work .....	13

---

# The purpose and scope of this guidance

1. This guidance aims to help Costs Lawyers understand the importance of information in their client care letter (CCL). You should refer to this guidance when drafting, modifying or updating your CCL.
2. If you work for an organisation that is authorised by another legal services regulator, such as the Solicitors Regulation Authority, that regulator's rules and guidance will apply to your organisation's CCL. However, you should check that your organisation's CCL is sufficient to meet your individual obligations as a Costs Lawyer in the Code of Conduct.
3. A CCL forms the basis of the relationship between you and your client, and provides an opportunity to set out your standard or case-specific terms and conditions. By ensuring this information is communicated to your client at the outset of an instruction, you establish clarity and certainty for both parties, and your client is appropriately protected.
4. This guidance uses the term CCL to refer to this type of contractual document, but you might also use terms such as "engagement letter" or "confirmation of instructions". This guidance applies in the same way regardless of the words you use to describe your CCL.

## Your obligations

5. Under paragraph 3.4 of the Code of Conduct, you must advise new clients in writing when instructions are first received of:
  - an estimate of fees / details of charging structure, and where that estimate subsequently becomes inaccurate or that charging structure changes, an updated estimate / notice of revised charges;
  - the client's right to complain;
  - how to complain (that is, your first-tier complaints handling procedure);

- 
- the period within which you will deal with complaints under your first-tier complaints handling procedure;
  - the client's right to refer their complaint to the Legal Ombudsman in the event the matter is not resolved to the satisfaction of the client or the matter has not been resolved within eight weeks of the complaint being made;
  - applicable time limits for referring the complaint to the Legal Ombudsman;
  - the Legal Ombudsman's contact details.
6. Under paragraph 4.6 of the Code of Conduct 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.
  7. You also have obligations to provide information under consumer protection law. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 require legal services providers, including Costs Lawyers, to provide certain clients with certain specified pre-contract information. For example, the main characteristics of the service, the best possible information about the overall cost of the matter, whether there are likely to be any disbursements, contact details of your regulator and the right to cancel within 14 days where a contract is made "off premises" or "at a distance". This applies to instructions from "consumers", which are defined in the legislation as individuals acting for purposes which are wholly or mainly outside their trade, business, craft or profession.
  8. Under the Provision of Services Regulations 2009, you must provide clients with the contact details of your professional indemnity insurance provider and the territorial coverage of that insurance.
  9. The General Data Protection Regulation (GDPR) requires you to provide certain information to clients about how their data is used, such as how long it is kept for, who it will be shared with and their data protection rights.



- 
10. These obligations do not necessarily all need to be met through the CCL, but you need to be aware of them and meet them in some way.

## Key principles to encourage engagement with the client

11. In 2016, the approved regulators jointly commissioned research to understand how clients engage with CCLs with a view to improving their effectiveness. It was found that “the perceived complexity of legal services communications is a major barrier to engagement, particularly for more vulnerable consumers” and that, while “there are limitations in terms of how CCLs can be made visually appealing without detracting from perceived professionalism, the consensus is that CCLs can be seen as impenetrable, with limited signposting and an emphasis on generic rather than personalised information”.
12. Eight key principles were identified from the 2016 research to encourage client engagement with CCLs and the information provided within them:
- i. **Show a clear purpose** – provide a clear rationale as to the role of the CCL and the importance of reading it upfront. Consider the title you use. For example, “Instruction Confirmation Letter” might have more resonance with certain clients than “Client Care Letter”.
  - ii. **Keep it concise** – recognise that the ideal length would be one to two pages. If this is not feasible, break information down into smaller sections and use a short, to the point sentence structure. The research evidenced that headings are a good tool to engage the client’s attention. Consider whether some of the information would be better conveyed in a separate document such as a client care leaflet.
  - iii. **Use plain language** – seek to avoid using legal terms, or archaic or complex language. Minimise the use of vague and/or heavily caveated sentences. Remember that accessible language is key to ensuring that all clients can understand CCLs regardless of their background.

- 
- iv. **Prioritise information** – focus on the information which is perceived to be most relevant to your client and ensure a logical flow. Avoid putting generic information such as terms of business or complaints procedures on the first page of a CCL.
  - v. **Personalise information** – using the CCL to demonstrate knowledge and understanding of your client’s case is important to build confidence. Use the CCL to provide details unique to your client’s case and estimated costs. Tailor the CCL so that irrelevant information is excluded. Use personal pronouns so that it is clear you are talking to the individual.
  - vi. **Make it easy to read** – use line spacing and avoid small font sizes. Use headings to make the CCL easy to navigate and avoid dense paragraphs. Break down information by using tables or bullet points.
  - vii. **Highlight key information** – use visual tools such as bold text, headers, summary boxes, tables, or diagrams to make it easier for clients to pick out key points.
  - viii. **Additional opportunities to engage clients** – it has already been suggested that some generic information, such as terms of business and complaints procedures, could be explained in a separate leaflet and referred to in the CCL. Remind your client of this information once your service is being provided when they might be more receptive.

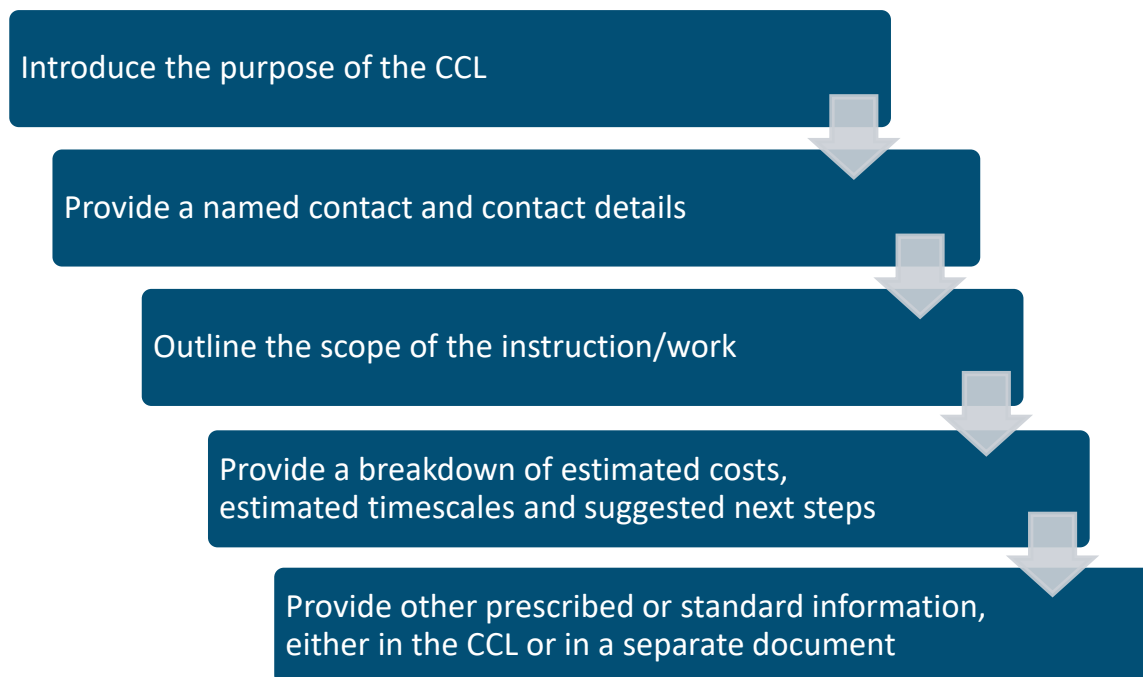
## Vulnerable consumers

- 13. Engaging with CCLs may be particularly challenging for certain vulnerable clients. The CLSB has a separate [guidance note](#) on vulnerable consumers which might be useful in this regard.
- 14. It is important to consider each client and whether steps can be taken to improve their experience and engagement depending on their specific vulnerability, for example by adapting information into braille, audio, or easy read format, or offering the opportunity to discuss the content by telephone.

---

# Essential information to be provided in a CCL

15. A suggested order for the provision of information in a CCL is shown below.



## Contact details

16. You should provide the name and contact details of the client's primary contact for the instruction, as well as an alternative contact in case the primary contact becomes unavailable.
17. You should explain your regulatory status as a Costs Lawyer, including that you are authorised and regulated by the Costs Lawyer Standards Board. If your work on the matter is being supervised by another person, the CCL should also provide their name and contact details.
18. Where the CCL is issued in the name of your organisation, such that the client is contracting with your firm or company rather than you as an individual, the CCL

---

should make clear the regulatory status of the organisation and any other individuals that will be working on the matter.

## Scope of work

19. The CCL should include:
- an outline of your understanding of the client's instructions;
  - a description of the work you will and will not do for the client;
  - details of the information or other assistance you will need from the client;
  - a description of what will happen next.
20. This information should be clear and specific to the individual case, rather than generic. The language and presentation used should be tailored to the needs of the client. For example, it might be appropriate to use technical legal terminology when preparing a CCL for a client who is a fellow legal professional, while plain language is likely to be preferable for an individual client without legal training.

## Fees

21. It is helpful to present a clear, concise breakdown of the likely costs of a matter toward the beginning of the CCL. If fees are to be charged on the basis of an hourly rate, you should indicate both the rate and the number of hours you expect to spend working on the matter, as well as factors that might impact your estimate. Any known or likely disbursements should also be included.
22. Below are two simple examples of approaches you could take, as appropriate:

Example 1:	<i>Our professional fees</i>	<i>£750</i>
	<i>Court fees</i>	<i>£500</i>
	<i>VAT</i>	<i>£250</i>
	<i>Total fixed fee</i>	<i>£1,500</i>

Example 2: *Based on the information you have provided to me, I estimate that your total bill for dealing with this matter will be between £750 and £1,250 plus*

---

*VAT, in addition to disbursements of between £300 and £500 plus VAT. The final cost will depend upon the volume of material I will need to review before I can provide my advice and whether specialist advice will be needed on the tax issue arising from your instructions. I will be able to confirm the costs more precisely as the matter progresses.*

23. For guidance on entering into contingency retainers (conditional fee agreements and damages based agreements), see our separate [guidance note](#).

## Likely timescale

24. Whilst this can be difficult to estimate, due to factors outside of your control, there are average timescales for dealing with different types matters and clients would like to know what these are. We suggest that your CCL sets out the average timescales and, if necessary, also sets out examples of why this might not apply in their case, for example delay by the other side or delay by the client in providing documents.

## Provision of other required information

25. Some types of information are seen by clients as less relevant than others at the beginning of the legal process. These include terms and conditions of business, complaint information, data protection information and regulatory information. However, such information still needs to be provided upfront for a number of reasons. One important reason is that, in relation to clients who are lay individuals, the Consumer Rights Act 2015 creates a presumption that a contract term is unfair (and thus unenforceable) if it purports to bind a consumer to terms with which the consumer had no real opportunity of becoming acquainted before the contract was concluded. Another reason is that, at the moment when the client needs the information, the relationship with their adviser might have broken down.
26. While such information should be provided upfront to allow you to comply with your obligations and ensure the client understands all your contractual terms, in

---

order to engage the client more successfully with the information in the CCL, it is recommended that this information is either placed at the end of the CCL or provided in a separate leaflet which is referred to in the CCL. The latter option provides the client with a reference document that can be referred to at a later date, when the information might be more relevant. It is open to you to use the CCL to draw your client's attention to, or highlight, certain aspects of the leaflet.

## Service levels

27. Your CCL should explain that you will communicate (and, if relevant, how and when you will communicate):
- progress on the matter;
  - changes to cost estimates and timescales;
  - important changes in the law that affect the matter; and
  - reasonably foreseeable risks that could affect the outcome.

## Complaints

28. As noted above, the CCL should state your regulatory status and any supervision arrangements in relation to the client's matter. It should also explain what a client can do in the event they have a complaint, including the information prescribed in paragraph 3.4 of the Code of Conduct. You can do this by including your complaints procedure in, or with, your CCL.
29. For guidance on what to include in your complaints procedure, see our separate [guidance note](#).

## Execution

30. In order to provide evidence that your client has received and agreed to the terms set out in your CCL, it is good practice to ask them to sign a copy for you to keep on file.

---

## Other information to be provided either within the CCL or by including a separate document

31. Below is a summary of generic information that should be included in, or alongside, the CCL. This is not an exhaustive list and you should consider whether other information needs to be provided for each matter. For example, if you are offering your client after the event (ATE) insurance, you might need to provide additional information as prescribed by the Financial Conduct Authority.

Professional indemnity insurance	Provide contact details of your insurer and the territorial scope of cover. Provide further details on request (for example, the level of cover).
Clauses limiting liability	Set out any limitations on the liability of the professional services provider.
Client money	Make clear that, in accordance with paragraph 3.6 of the Code of Conduct, you cannot accept client money save for incurred disbursements and payment of your invoiced professional fees. If you offer clients the option of using a third party managed account (TPMA), explain how the TPMA works. For further information, see our separate <a href="#">guidance note</a> on client money.
Documents	Notify the client of your right to keep copies of documents for your professional records (subject to the client's data protection rights) and your arrangements in place for the return of originals, if relevant.
Obligations	Explain how you are required to act in accordance with the Costs Lawyer Code of Conduct and other rules issued by the CLSB as your regulator.
Data protection	Explain the arrangements you have in place to ensure compliance with data protection laws, including how you will process and store personal data. There is more information on this in the next section below.
Outsourcing	Advise the client of the scope and relevant terms of any proposed outsourcing arrangements (if applicable).

Contract term and termination	Advise how the instruction may be brought to an end and what liabilities the client might face in the event they terminate the retainer prior to conclusion of the matter.
-------------------------------	--

## A note on data protection

32. Telling the client how their personal data will be collected, stored and used under the General Data Protection Regulation (GDPR), as well as their rights in relation to that data, could be covered in the separate leaflet suggested above or your organisation's privacy policy. In the CCL itself, it is advisable to refer to this information and identify any third parties that personal data might be shared with, such as the CLSB in the event of a complaint, your auditors or your insurance company in the event of a claim. For further information, please refer to the Information Commissioner's Office (ICO) [Guide to the UK General Data Protection Regulation \(UK GDPR\)](#).
33. You might need to consider whether you are a "data controller" or a "data processor" in relation to a particular client. If you are dealing with a lay client directly, then you will likely be a data controller in relation to their personal information. However, if you are instructed by a professional firm acting on behalf of an individual client (such as a firm of solicitors) then you might be acting as a data processor in relation to the underlying client's personal data, with the professional firm being the data controller. The GDPR requires that certain contractual provisions (for example, as to how the data will be processed and the protections that the processor will put in place) are instituted between a data controller and a data processor when personal data is shared. If you believe you will be acting exclusively as a data processor, you should ensure that this arrangement is documented appropriately and that all parties are clear about the extent of your role upfront.
34. This is a complex area. Please refer to ICO guidance such as:
  - [Controllers and processors](#)
  - [What needs to be included in the contract?](#)



---

## Pro bono work

35. Where you carry out work for a client on a pro bono basis, this should be made clear in the CCL. The following wording is suggested by the Access to Justice Foundation:

*Pursuant to section 194 of the Legal Services Act 2007 and Civil Procedure Rule 46.7, in the event you are successful in this matter or any of its stages, we will seek to recover “pro bono costs” from your opponent. This is a sum of money that represents how much the legal representation would have cost if we had charged for our services and can be ordered by the court or be included in a settlement agreement. When pro bono costs are obtained the legislation requires such costs be paid to the prescribed charity, the Access to Justice Foundation, which supports the provision of free help to yet more people.*

**END**

## **GUIDANCE NOTE: CLIENT CARE LETTER**

**Regulator: Costs Lawyer Standards Board**

**Effective date: 24 October 2018**

### **1. Introduction**

This guidance seeks to assist you as a Costs Lawyer authorised and regulated by the CLSB (“Costs Lawyer”) in understanding the importance of the contractual relationship in your client care letter (“CCL”). It seeks to assist you when drafting a CCL and to serve as a useful check for an existing CCL in use.

A CCL forms the basis of the relationship between you and your client. A CCL allows you the opportunity to set out your standard or case specific terms and conditions. In providing this information at the outset, there is clarity for both parties and clients are appropriately protected.

### **2. Why has the original guidance note been updated?**

In 2016, the approved regulators jointly commissioned research to understand how clients engage with CCLs with a view to improving their effectiveness. It was found that *‘the perceived complexity of legal services communications is a major barrier to engagement, particularly for more vulnerable consumers’* and that, while *‘there are limitations in terms of how CCLs can be made visually appealing without detracting from perceived professionalism, the consensus is that CCLs can be seen as impenetrable, with limited signposting and an emphasis on generic rather than personalised information.’*

On 15 December 2016, the Competition and Markets Authority published a market study report on legal services under which it set out transparency expectations on the supply of legal services. A key outcome identified in the report was to address *“consumers understanding of the price and service, what redress is available and the regulatory status of their provider, and to enable them to compare providers.”* This guidance was therefore revised to take into consideration elements of that outcome.

### **3. Does this guidance apply to me?**

Yes, unless you work for a firm regulated or ABS licensed by another approved regulator e.g. the SRA, in which case their prevailing rules and guidance will apply in respect of your CCL.

### **4. Should both parties sign a CCL?**

In order to provide evidence that your client has received and agreed to the terms set out in your CCL it is good practice to ask them to sign and return a copy for your file.

## 5. Key principles to encourage engagement with the client

Eight key principles were identified during the 2016 research to encourage client engagement with CCLs and the information provided within them:

**(i) Show a clear purpose** – provide a clear rationale as to the role of the CCL and the importance of reading it upfront. Consider the title, ‘Instruction Confirmation Letter’ may have more resonance with the client than ‘Client Care Letter’.

**(ii) Keep it concise** – recognise that the ideal length would be 1-2 pages. If this is not feasible, break information down into smaller sections and use a short, to the point sentence structure. The research evidenced that headings are a good tool to engage the client’s attention. Consider whether some of the information would be better conveyed in a separate document such as a client care leaflet.

**(iii) Plain English** – seek to avoid using legal terms, archaic or complex language. Minimise the use of vague and/or heavily caveated sentences. Remember that accessible language is key to ensuring that all clients can understand CCLs regardless of their background.

**(iv) Prioritise information** – focus on the information which is perceived to be most relevant to your client and ensure a logical flow. Avoid putting generic information such as terms of business or complaints procedure on the first page of a CCL.

**(v) Personalise information** – using the CCL to demonstrate knowledge and understanding of your client’s case is important to build confidence. Use the CCL to provide details on your client case and estimated costs. Tailor the CLL so that irrelevant information is excluded. Use personal pronouns so that it is clear you are talking to the individual.

**(vi) Make it easy to read** – Use line spacing and a large font size (minimum size 12). Use headings to make the CCL easy to navigate and avoid dense paragraphs. Break down information by using tables or bullet points.

**(vii) Highlight key information** – Use visual tools such as bold text, headers, summary boxes, tables or diagrams to make it easier for clients to pick out key points.

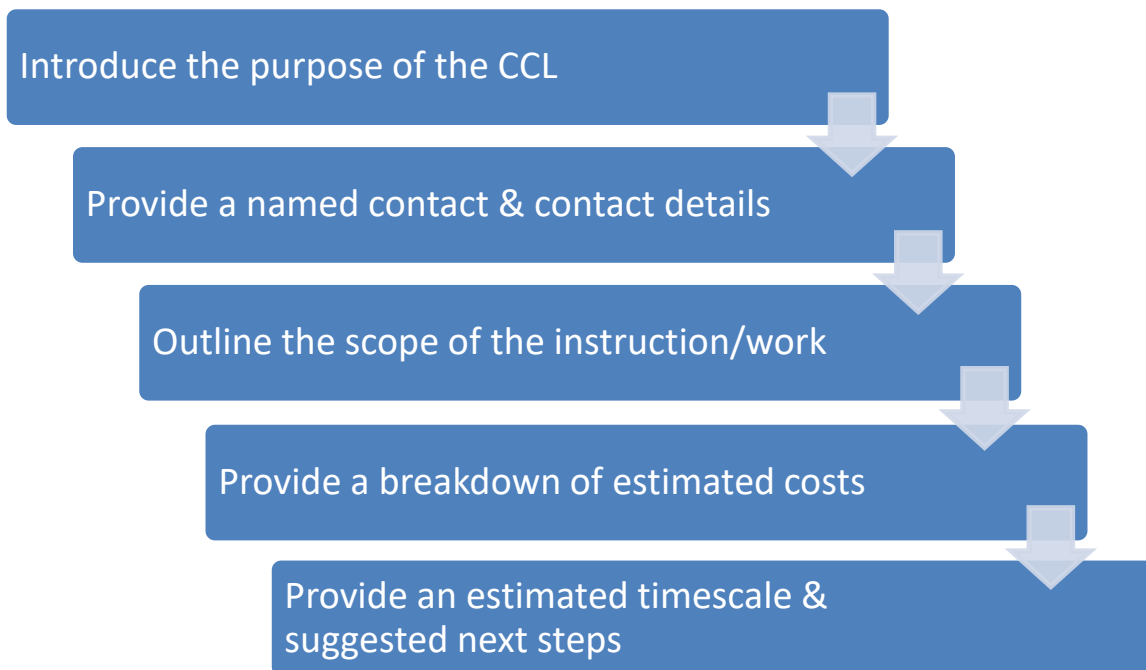
**(viii) Additional opportunities to engage clients** – It has already been suggested that some generic information, such as terms of business and complaints procedures, could be explained in a separate leaflet and referred to in the CCL. Remind your client of this information once your service is being provided, when they may be more receptive.

## 6. Vulnerable consumers

Engaging with CCLs may be particularly challenging for certain vulnerable clients. The CLSB has a separate guidance note on vulnerable consumers which can be accessed on the CLSB website. It is important to consider each client and whether steps can be taken to improve their experience and engagement, this may be as simple as using a larger font size.

## 7. Essential Information to be provided in a CCL

A suggested flow for information:



### (i) Contact details of person

Example of expected information:

*'Thank you for instructing XX to act for you in connection with .... (details of the nature of the instruction). XX is a Costs Lawyer and is authorised and regulated by the Costs Lawyer Standards Board under the Legal Services Act 2007 and has been qualified since XXX. XX will be your main point of contact on a day to day basis and can be contacted during office hours of 9am-5pm on weekdays; contact details are provided below. Should XX be unavailable then please ask for their colleague, XX, who should be able to assist you.'*

Phone: XX

Email: XX

### (ii) Scope of work and next steps

You should include:

- (a) A clear outline of the case/agreed work.
- (b) Confirmation of what you will do/not do.
- (c) Clear instructions on what is needed from the client.
- (d) Clear direction on what will happen next.

This needs to be specific to the individual case, not generic. An example of (ii)c and (ii)d can be found in the following text:

*'Please take time to read through this letter, and the Client Engagement Leaflet attached, as these two documents will form the basis of the agreement for me to act on your behalf. Please feel free to contact me if you require further clarification of their contents. Once you have read and understood them please can you sign one copy of this letter and one copy of*

*the Client Engagement Leaflet and return them to me in the envelope provided. I will then contact you by phone to take further instructions.'*

The CCL should note that if subsequent work is accepted then this will be the subject of a separate CCL.

### **(iii) Fees**

Consumers prefer letters that present a clear, concise breakdown of the costs on the first or second page of the CCL.

#### **Example 1**

<i>"Our professional fees</i>	<i>£750.00</i>
<i>Court fees</i>	<i>£500.00</i>
<i>VAT</i>	<i>£150.00</i>
<b><i>Total</i></b>	<b><i>£1,400.00"</i></b>

#### **Example 2**

*'Based on the information that you have provided to me, I estimate that your total bill for dealing with this matter will be in the region of £750 and £1,250 plus VAT and disbursements.'*

### **(iv) Likely timescale**

Whilst this is often difficult to estimate, due to contingencies outside of your control, there are average timescales for dealing with matters and clients would like to know what these are. We suggest that your CCL sets out the average timescales e.g. 8-12 weeks, and if necessary, also sets out examples of why this may change, for example delay by the other side, or by the client in providing documents.

### **(v) Provision of information that is perceived to be less relevant**

Some types of information are seen by the client as less relevant than others at the beginning of the legal process. These can include: terms and conditions of business, complaint information, data protection information, information about the Costs Lawyer as a legal services provider, regulatory information.

Whilst this information should be provided in order for you to comply with your regulatory obligations, it is not a priority for the client at this stage and in order to engage the client more successfully with the information in the CCL, it is recommended that this information either be placed at the end of the CCL or be provided in a separate leaflet which is referred to in the CCL.

The latter option is common with service providers such as insurers, and it provides the client with a reference document that can be kept and referred to at a later date. It is open to you to use the CCL to draw your client's attention to or highlight certain aspects of the leaflet.

### **(vi) Service levels**

The CCL should explain that you will communicate:

- Progress on the case.
- Timescales.
- Important changes in the law.
- Reasonably foreseeable risks which could affect the outcome.

**(vii) Redress in the event of a complaint**

The CCL should state your regulatory status and any supervision arrangements. It should also provide the contact details of the Legal Ombudsman and Costs Lawyer Standards Board for use in the event a service or conduct complaint cannot be resolved under your complaint handling procedure.

**8. Information to be provided either within the CCL or by including a separate document**

Professional Indemnity Insurance	Advise of the current level of professional indemnity insurance in place (including cover for loss of documents) and that an adequate level will be in place throughout the instruction to cover the risk of the work.
Clauses limiting liability	Advise of any clauses limiting liability and that if any such clauses become known about in the future, they will be brought to the attention of the client.
What you cannot do	Advise that in accordance with Principle 3.6 of the Costs Lawyer Code of Conduct, you cannot accept client money save for disbursements and payment of your proper professional fees.  <i>(Note: Not applicable if you work for an SRA regulated firm)</i>
Documents	Advise of your right to keep copies of documents for your professional records and your arrangements in place for the return of all original documents.
Obligations	Advise of how you are required to act in accordance with the prevailing Costs Lawyer Code of Conduct and Practising Rules issued by the CLSB as your regulator.
Complaints	Attach or include your/your employer's complaints procedure (the CLSB has issued a guidance note on complaints procedures which can be located on the CLSB website).
Data protection	Advise of the current law and arrangements in place to ensure compliance with data protection.
Outsourcing	Advise of proposed arrangements <i>(if applicable)</i> .
Storage of documents	Advise how you will store documents, retrieval arrangements and costs <i>(if applicable)</i> .
Contract term and termination	Advise how the contract may be terminated by either party.

Contract jurisdiction	The legal jurisdiction governing the contract e.g. England & Wales.
-----------------------	---

## 9. Pro bono work

Where you carry out pro bono work, this should be clarified in the CCL. The following wording is suggested by The Access to Justice Foundation:

*'Pursuant to Section 194 of the Legal Services Act 2007 and Civil Procedure Rule 46.7, in the event you are successful in this matter or any of its stages, we will seek to recover "pro bono costs" from your opponent. This is a sum of money that represents how much the legal representation would have cost if we had charged for our services, and can be ordered by the court or be included in a settlement agreement. When pro bono costs are obtained the legislation requires such costs be paid to the prescribed charity, The Access to Justice Foundation, which supports the provision of free help to yet more people.'*

**END**

## Costs Lawyer Standards Board





---

## Background and purpose of this guidance

1. In 2016, the Competition and Markets Authority (CMA) [carried out a market study into the supply of legal services in England and Wales](#). The study concluded that “competition in the legal services sector for consumers and small businesses is not working well” and that information issues “weaken the ability of consumers and small businesses to drive competition through making informed purchasing decisions”. Amongst the CMA’s recommendations was improving “upfront” transparency on price and services for consumers.
2. The CMA reviewed the implementation of its recommendations in 2020 and published a [report of its findings](#). The CMA found that although progress had been made, more needed to be done to help consumers choose between providers, and that regulators should aim to improve the clarity and comparability of information by promoting good practice amongst regulated lawyers.
3. This guidance note explains the kind of price and service information that Costs Lawyers should make available for individual consumers or small businesses (with up to ten employees), as these were the particular focus of the CMA’s market study and review. It relates to information that is provided before a lawyer is formally engaged (that is, before a client care letter is issued), in order to help consumers choose a service provider that is right for them.
4. This guidance note therefore aims to:
  - Promote good practice in the provision of upfront information to consumers by Costs Lawyers through websites and other promotional material.
  - Assist Costs Lawyers in meeting their obligation under paragraph 4.6 of the [Code of Conduct](#) to ensure that clients (including prospective clients) are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.
  - Assist Costs Lawyers to attract clients by transparent promotion of their services. Clients will be more willing to approach you or your firm if they are clear about the services that you provide and what they will cost.

- 
- Reduce misunderstandings and prevent possible complaints later on when clients do instruct you.
5. The information that you need to provide a client at the point of engagement (once the client has chosen to instruct you) can be found in our separate guidance note on client care letters in the [Costs Lawyer Handbook](#). Some of the suggestions in that guidance note, particularly relating to price and service information, could be used by Costs Lawyers to also improve their websites and promotional material.

## Who does this guidance apply to?

6. This guidance applies to you if you are:
- (i) A sole practitioner Costs Lawyer who has a website or issues promotional material.
  - (ii) A Costs Lawyer working in a costs law firm or other unauthorised organisation where that organisation has a website or issues promotional material and where your position in the organisation gives you some control or influence over those media.
7. This guidance does not apply to you if you are:
- (i) A Costs Lawyer working in an organisation authorised by another regulator under the Legal Services Act 2007. In particular, for Costs Lawyers working in an organisation regulated by the Solicitors Regulation Authority (SRA), the SRA's rules on price transparency for the entity prevail.
  - (ii) A Costs Lawyer working only in-house (for example, in a bank, corporate or government department) and not offering services direct to the public.

## Information on price

8. Your first duty is to ensure that information you provide is not misleading or inaccurate when you publicise your business or yourself as a Costs Lawyer (Code of Conduct paragraph 1.4).

- 
9. Whilst transparency in relation to price and services generally will help your business and reduce complaints, the recommendations in this guidance relate to the services you offer to individual consumers and those small businesses that will not have any specialist knowledge in this area.
10. When you promote services for individuals and small businesses, whether on your website or otherwise, you should include price information about those services as follows:
- State the total cost of the service, where known (for example, if you charge a fixed fee).
  - Where you cannot give a total cost, you can give an indicative cost. This could be a range of likely total costs. You might also choose to provide a typical or average cost for the type of service, particularly if the range is quite large.
  - If the price is not fixed, give the basis for charges, including hourly rates (by grade of staff where applicable). If feasible, provide an indicative number of hours or a range of hours needed for different services.
  - If the price is by stage, then provide details on that basis. If it would not be obvious to a consumer what a stage of the service is, provide a short explanation.
  - Be clear about any VAT chargeable.
  - Indicate the amount of any disbursements that are likely to be incurred (such as court fees) and when they are likely to be incurred. Again, you might need to give a range.
  - Any factors that mean the price may exceed your fixed fee, or the range or estimate of fees that you have given. This could include, for example, the need to complete the work with urgency or factors such as complexity or an exceptionally high volume of material. While consumers understandably want certainty on price, we appreciate that it might not be possible to give this certainty in many situations. Being as clear as you can as to the circumstances in which extra costs are likely to be incurred will help prevent your pricing

---

information from being unintentionally misleading. It will also reduce complaints later on.

- If you offer conditional fee agreements (CFAs), then set out the circumstances in which clients might have to make any payments themselves, such as disbursements. If there is a cost to the client of the assessment for suitability for a CFA, this should be set out.
- It can be helpful to link to external information (for example, to the relevant section of gov.uk for court fees) when this will assist the consumer's understanding.
- If the type of service you are promoting involves a risk that the client will have to pay costs to the other side, you should indicate this and make it clear that this is additional to your fees.

11. In providing price information, you might not be able to cover all of the different services that you or your organisation offers, but you should look to cover the most common. In [An ombudsman's view of good costs service](#), the Legal Ombudsman states:

*"We recognise that you won't be able to cover all the different circumstances that could affect the cost of a piece of work on your website, but you might want to make it clear what the expected costs would be for a typical instruction and some typical examples of things that would affect the price."*

12. An illustrative example of information on the price of a Costs Lawyer acting for a client challenging a solicitor's bill is at Annex 1.

## Information on services

13. For price information to be meaningful, consumers also need information about the services you are offering and what is included. Price information will not mean much unless the consumer knows what they are getting for that price.

- 
14. Therefore, we recommend that you set out, in as much detail as you can, what services will be provided for each price or range indicated. Where possible, you should include key stages for the work. The client might not understand what the key stages are so you will need to explain them in simple language.
  15. You should inform clients if anything that could reasonably be expected to be included in the price is not.
  16. To be able to make an informed choice, consumers will want to know some contextual information. Therefore, we also recommend that you set out:
    - Typical timescales for the work. This might be by key stages, as above. Where the timescale is out of your control (for example, it depends on the court or other side) you might need to give a general estimate, for example: “If the matter is not settled by agreement, cases of this kind typically take 6 to 9 months for the court to resolve, assuming there is no appeal”.
    - The qualifications and experience of those who will be providing the particular service. For example, the number of years they have been qualified as a Costs Lawyer, specialisms that they have, and the type or range of matters that they advise on.

## Presenting the information

17. The target audience for the information is individual consumers and small businesses. They will need information presented differently from professional clients, who will be more familiar with legal processes and terminology and are more likely to have an idea of competitive pricing.
18. It will help to:
  - Keep information concise and sentences short.
  - Break up the text with headings, diagrams and tables, and set out any processes in stages.

- 
- Use plain language where possible, and if you do have to use a technical term then give an explanation.
  - Think of it from the consumer's point of view and focus on the information that they need.
  - Provide anonymised examples of typical cases that you have dealt with in order to bring the information to life.
  - Consider providing information in different languages where this will meet consumer need.
19. Where you have a website, display the information in a way and place that is easily accessible – for example, not buried away in a terms and conditions link at the bottom of the page. A website that is easy to read and navigate will boost interest in your business and inform and attract consumers. You will also want to consider that many people now access websites using mobile devices, and therefore make your website mobile friendly.
20. Tips on website accessibility are available from the [Website Accessibility Initiative](#).

## Seeking feedback

21. The most important thing is that the consumer or small business actually understands how much they might pay for your services, so they can make a meaningful comparison, and ultimately an informed decision on who to instruct. Once you have taken steps to include appropriate price and service information on your website and in your promotional materials, the next step is to seek feedback on your efforts to check whether they are achieving their purpose.
22. There are many different ways you could do this. For example, you could ask new clients (during the client onboarding process) whether they looked at the information, whether they understood it and whether they relied on it in making their decision. You could track the questions you are asked by clients and see whether those questions could be more clearly addressed in your promotional

---

material. Or you could ask users of your website whether they found information helpful by using a survey pop-up.

23. Testing whether the information you provide is having the desired effect is an important part of ensuring you meet your transparency obligations. The CLSB would also be interested in any data or learnings from the testing that you carry out; please [contact us](#) if you have information to share.

## Further guidance

- The pre-engagement chapter of [An ombudsman's view of good costs service](#), published by the Legal Ombudsman, contains advice on price transparency based on common problems and complaints from consumers.
- The CLSB's guidance note on client care letters in the [Costs Lawyer Handbook](#) contains further suggestions for presenting information to clients.

## ANNEX 1

Price information (illustrative example for website or promotional material)

Acting for a consumer who wants to dispute a solicitor's bill

Stage in the case	Hourly rate (price you pay per hour of my time)	Likely cost of each stage (estimate)	Disbursements (costs you have to pay to other people)
Providing initial advice on your prospects of success	£x	£x - £x	
Issuing proceedings for assessment of your bill, and providing advice on your solicitor's response	£x	£x - £x	Court issue fee of £55. See: <a href="#">Civil and Family Court fees</a>
Preparing for, and representing you at, an initial hearing (this is only necessary if your solicitor disagrees that a detailed assessment should take place)	£x	£x - £x	
Preparing for, and representing you at, a detailed assessment hearing	£x	£x - £x	Court fees depend on the amount of the solicitor's bill and start at £369 where the solicitor's fees are £15,000 or less. See: <a href="#">Civil and Family Court fees</a>
Reviewing the assessment decision and advising on next steps	£x	£x - £x	

### Please note that:

- While we have done what we can to ensure accuracy, these are estimates only and the actual amount charged to you will depend on the circumstances of your matter and how much work you ask us to do.
- For example, these fees may be exceeded in cases of particular complexity or where many parts of your solicitor's bill are disputed for different reasons. Equally, a hearing might be adjourned and it could be necessary to attend court twice.



- 
- *Fees may be less than the range given where agreement is reached with your solicitor early on; for example, without the need for a detailed assessment hearing or where you only ask us to assist with elements of the case.*
  - *Court fees are subject to change by the Courts and Tribunals Service.*

**The cost estimates do NOT include:**

- *Any appeal or enforcement costs.*
- *Any costs of the assessment proceedings that you are ordered by the court to pay the solicitor. This will happen if, for example, the solicitor has made a reasonable offer to settle which you do not accept or if you fail to have the bill reduced by at least 20%.*
- *If the court orders the solicitor to pay all or part of your costs of having the bill assessed, you might be reimbursed for your costs but your liability to pay our fees remains.*
- *Other disbursements or exceptional costs as follows [list]:*

For more information about the process for challenging a solicitor's bill, see [Challenge your solicitor's bill: How to apply](#) on the gov.uk website.

**END**

**GUIDANCE NOTE**  
**COSTS TRANSPARENCY VIA WEBSITES & PROMOTIONAL MATERIAL**

**Regulator: Costs Lawyer Standards Board**

**Effective date: 26 April 2019**

This guidance note has been issued following the outcome of the Competitions & Markets Authority report on legal services dated 15 December 2016. The report concluded *“competition in the legal services sector for consumers and small businesses is not working well”* and that information issues *“weaken the ability of consumers and small businesses to drive competition through making informed purchasing decisions.”*

It relates to cost and pricing transparency via websites and promotional material. It should be noted that cost and pricing transparency requirements under Client Care Letters is addressed under a separate guidance note in issue by the CLSB (available on the CLSB website at [www.clsb.info](http://www.clsb.info)).

**1. Regulatory objectives**

The purpose of this guidance is to promote the following regulatory objectives:

- Improving access to justice.
- Protecting and promoting the interests of consumers
- Promoting competition in the provision of services.

**2. Costs Lawyers this guidance does not apply to**

- (i) Costs Lawyer working for an SRA regulated firm: The CLSB is aware from its on-going analysis of the profession it regulates, that approximately 44% of Costs Lawyers work for an SRA regulated firm of Solicitors. This guidance note does not apply to those Costs Lawyers as SRA issued guidance on costs transparency for an entity the SRA authorises or Alternative Business Structures the SRA licence prevail.
- (ii) Costs Lawyer working in-house e.g. insurance firm, bank or IT company: This guidance does not apply to those Costs Lawyers as they do not offer services direct to the public.

**3. Costs Lawyers this guidance does apply to**

- (i) A sole practitioner Costs Lawyers who:
  - has a website; and/or
  - issues promotional material.
- (ii) Costs Lawyer working for costs law firm where that firm:
  - has a website; and/or

- issues promotional material.

However, the CLSB appreciates that as an employee, such a Costs Lawyer may not have any control or influence over their employers, their employers' website or promotional material.

#### **4. What a Costs Lawyer should do if this guidance applies to them**

This guidance is applicable to Costs Lawyers identified under paragraph 3 above that advise the following on legal costs issues:

- individual consumers; and/or
- small businesses (i.e. those with up to 10 employees)

The outcomes such a Costs Lawyer should be seeking for individual consumers and small businesses are:

Outcome 1: Consumers and small businesses that may need advice on issues relating to legal costs are able to make informed choices about which provider to use, based on clear and accurate pre-engagement information on providers' websites and in their client-facing communications; and

Outcome 2: as their matter progresses, clients have the best possible information about changes to prices and/or services.

#### **5. Information on cost and pricing to be provided**

Cost and pricing information should be sufficient, reliable (i.e. applicable and up to date) and presented in ways that are relevant to consumers and small businesses.

Costs Lawyers should provide the following types of information in a prominent place on their website and in other promotional material that they produce:

- A clear description of the service, price, whether the price is fixed and, if so, what services are included in the fixed price and what factors might incur additional costs (and the likely price).
- If the price is not fixed, the basis for charges including hourly rates (by grade of staff) and the likely number of hours needed for different services.
- Scenario-based pricing/indicative fixed fees (where illustrative examples are given including likely cost and timescales, and factors that may affect these and the circumstances where additional fees may be charged).
- Likely scale of disbursements, for example court fees, and when these will be payable.
- Whether VAT is included.
- Any referral arrangements and related fees.
- General factors that could increase or decrease costs.

## **6. Transparency and Client Care Letters**

As is seen in the intended Outcome 1 above, the intention of this guidance is to provide consumers and small businesses with information about the cost of a Costs Lawyers service at the pre-engagement stage, to enable them to make informed choices about which provider to use before they enter into a contract with a Costs Lawyer. However, it is also important that consumers receive clear information once they have decided to instruct a Costs Lawyer. The guidance provided in this note is that Costs Lawyers provide this information voluntarily, as an indication of best practice. It goes beyond the information required under a Client Care Letter.

**END**

## **COSTS LAWYER STANDARDS BOARD**

### **AUDIT OF 2020 CPD RECORDS**

#### **REPORT TO BOARD**

##### **Process**

A total of 20 2020 CPD Records (randomly selected) were audited.

The audit process changed this year. Instead of contacting all the individual providers, and asking them to confirm the training returned was completed, the individual Costs Lawyer was contacted and asked to provide evidence. They are required to keep evidence by the CPD Rules, and this was a significantly more efficient way to run the audit.

First, the points recorded on the Records were checked against the points caps for different kinds of CPD activity. As the cap on points earned from e-learning was lifted in response to the pandemic this was not a significant issue this year. After the deductions one Costs Lawyer had less than 12 CPD points, but as they has 11.5 this was not pursued.

Secondly, ACL were asked to validate CPD points claimed for membership and the online conference sessions.

After this, the Costs Lawyers were contacted and asked to provide evidence of all other training.

The audit process took place over approximately 1 month (compared to 2 months last year).

##### **Outcome**

All 20 Costs Lawyers passed the audit.

In 2020 much of the training was online, sometimes from providers who had hurriedly moved their provision online in response to the pandemic. Some Costs Lawyers listened to podcasts as part of their training. The usual certificates were therefore not always available and we accepted other forms of evidence, such as email confirmation of registration for a webinar. As long as the Costs Lawyer cooperated with the audit and said they provided the information possible we took such documentation at face value. Also, we did not require evidence of every individual course, taking a risk-based approach to the audit – which will inform how we conduct future CPD audits.

1 Costs Lawyer was only able to provide hard evidence for a relatively low proportion of her training, and claimed too many points for some webinars. After email discussions we were satisfied she had, in all likelihood, completed the training listed and therefore recorded a pass. We informed her, however, that she was likely to be audited again in the next few years. She was completely understanding of this.

Overall the pandemic had far less impact on the audit, and the provision of evidence, than we had anticipated. Whilst the activities returned in their records have changed (with more online learning, internal training and podcasts), and in spite of many enquiries throughout the year, Costs Lawyers appear to have found ways to continue to engage effectively with CPD through the pandemic.

Jacqui Connelly  
2 April 2021



---

## Introduction

1. This framework sets out how the CLSB supervises compliance by Costs Lawyers with regulatory requirements relating to the adoption and use of appropriate complaints procedures.
2. This framework forms part of a wider supervision programme, which involves the use of similar frameworks for other supervision activities such as auditing CPD attainment and compliance with the Accredited Costs Lawyer Rules. It should be read in conjunction with the CLSB's [Supervision Policy](#).

## Regulatory context

3. Costs Lawyers who are regulated by the CLSB must have in place, individually or through their organisations, an internal procedure for handling complaints from clients or members of the public. Principle 3.2 of the [Costs Lawyer Code of Conduct](#) states that Costs Lawyers 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)”.
4. Costs Lawyers who work in unregulated organisations (such as costs law firms) or as sole practitioners must submit their complaints procedure with their annual application for a practising certificate. Costs Lawyers are notified that those complaints procedures are subject to audit.
5. The main purpose of the audit is to improve the quality of Costs Lawyers' complaints procedures and ensure they are fair, transparent and provide effective safeguards. This helps to give consumers of Costs Lawyers' services justified confidence that any complaints will be handled appropriately.
6. The [Costs Lawyer Handbook](#) contains a model complaints procedure Costs Lawyers can adapt for their own use.



---

## Audit criteria and process

7. The Costs Lawyer Handbook contains a [Guidance Note](#) intended to help Costs Lawyers produce an effective procedure for handling first-tier complaints. The guidance details requirements for a complaints procedure, and those requirements form the basis of the audit.
8. An audit of approximately 20 complaints procedures is undertaken annually. Costs Lawyers whose procedures are to be audited are randomly selected from those who are required to submit them.<sup>1</sup>
9. Recognising that complaints procedures are usually adopted organisation-wide rather than by individual Costs Lawyers (other than sole practitioners), we only select one Costs Lawyer per organisation for audit in any given year.
10. Complaints procedures are audited against the checklist at Annex A. A checklist is completed for each complaints procedure that is audited. The completed checklist is stored against the relevant Costs Lawyer's record in the internal database.
11. Completed checklists are shared with Costs Lawyers where appropriate, including where non-compliance is identified or where the Costs Lawyer asks to see the completed checklist.
12. The audit is undertaken in a manner which makes clear that the CLSB's intention is to support rather than castigate individual Costs Lawyers and organisations, in order to facilitate better client outcomes. However, failure to cooperate with the audit or to make necessary changes to a complaints procedure without a reasonable explanation could result in disciplinary action being taken against a Costs Lawyer under the Disciplinary Rules and Procedures.

---

<sup>1</sup> In 2021, selection of complaints procedures for audit will not be random but will target procedures that were identified during the 2020 practising certificate renewal process as not complying with the guidance. If necessary, randomly selected complaints procedures will be added to give a total of 20.

---

## Audit outcomes

13. Where a complaints procedure is found to comply with the guidance, the Costs Lawyer will be notified of the outcome by email.
14. Where a complaints procedure is found to be non-compliant, the Costs Lawyer will be informed and asked to bring the complaints procedure into compliance as soon as possible.
15. If the complaints procedure is used by more than one Costs Lawyer (i.e. it is an organisation-wide procedure), the most senior regulated Costs Lawyer working at the organisation will be contacted about the non-compliance, even if they were not the Costs Lawyer initially selected for audit. This is because that Costs Lawyer is likely to be best placed to effect the necessary changes within the organisation.
16. The Costs Lawyer will be advised that the complaints procedure they submit with their next application for a practising certificate will be checked at the start of the new practising year. If, at that time, no change has been made to the complaints procedure since the audit outcome was communicated, then an explanation will be sought from the Costs Lawyer and disciplinary action may be instigated where appropriate. If changes have been made, but the revised complaints procedure still does not comply with the guidance, this will be communicated to the Costs Lawyer and further changes will be requested within a specified timeframe.
17. Organisations are offered the opportunity to submit their revised complaints procedures for review as soon as they are ready.
18. The audit will take place in the first half of the practising year, to allow organisations sufficient time to develop and implement revised complaints procedures (where necessary) prior to the practising certificate renewal window opening.
19. No organisation's complaints procedure will be audited more than once in three years, other than by way of follow-up in instances of non-compliance. If the random

---

selection of a Costs Lawyer for audit in any given year would infringe this principle, the Costs Lawyer will not be audited and another Costs Lawyer will be randomly selected in their place.

20. Upon completion of the annual audit a report of findings is provided to the CLSB Board. Learnings from the audit are used to provide feedback to the profession (for example, by highlighting anonymised examples of poor practice and good practice) and to inform our regulatory arrangements and guidance materials as appropriate.

# Annex A



## Complaints Procedure Audit

### A. Introduction

1. The [Costs Lawyer Code of Conduct](#) provides that Costs Lawyers must have in place an effective first-tier complaints procedure which is simple and transparent, ensures that a complaint can be made by any reasonable means, and takes into account the individual needs of clients (in particular the needs of vulnerable clients) (Principle 3.2).
2. As part of its supervision activities, the CLSB undertakes a random audit of complaints procedures. This helps to ensure that Costs Lawyers' clients have confidence that any complaints will be handled appropriately.
3. To carry out the audit, we assess complaints procedures against the criteria in the checklist below. This is based on the [Guidance Note on Complaints Procedures](#) in the Costs Lawyer Handbook.
4. The CLSB will work with you to help you put a fair and compliant complaints procedure in place. Please do not hesitate to contact Jacqui Connelly ([enquiries@clsb.info](mailto:enquiries@clsb.info)) if you need support or advice during this audit process.
5. The [Costs Lawyer Handbook](#) contains a model complaints procedure that Costs Lawyers can adapt for their own use.

### B. Audit checklist

Name and CL number of Costs Lawyer		
Name of organisation (if relevant)		
Section A: Requirements		Complies?
1	State date effective or last updated	
2	Be clear and simple with as few steps as possible	

3	Identify the person to whom the complaint should be made (where possible this should be someone not involved in the matter leading to the complaint, and someone with the appropriate seniority, training and understanding to provide a good complaint handling process)	
4	Be reasonable, fair, proportionate and responsive	
5	Encourage complaints to be made as soon as possible, and set out the time limits for raising unresolved complaints with CLSB and the Legal Ombudsman (with CLSB this is ordinarily within 12 months of the date on which the matters giving rise to the complaint occurred or the date on which the complainant first became aware that they had grounds for the complaint. This period can be extended in exceptional circumstances. With the Legal Ombudsman this is within six months of the Costs Lawyer providing a final response to the complaint at first-tier, and no more than six years from the date of the matter giving rise to the complaint, or no more than three years from when the complainant should reasonably have known there was cause for complaint)	
6	State clearly the timeframe for a complaint to be resolved (this should be within eight weeks of receipt of the complaint)	
7	Advise that if the complainant is not satisfied with the outcome of the complaint under the complaints procedure, or the complaint has not been resolved within eight weeks, then the complainant has the right to refer a service complaint to the Legal Ombudsman, or refer a conduct complaint to the CLSB, and provide the timeframes for referral	
8	Provide contact details for the Legal Ombudsman and CLSB	
9	Advise the complainant of an approved alternative dispute resolution (ADR) body and state whether you agree to use that body's services (see paragraphs 18 and 19 of the <a href="#">Guidance Note</a> for further details of the requirements)	
<b>Section B: Recommendation</b>		
10	Complaints procedure published on website (as recommended by the Competition and Markets Authority)	
<b>Section C: Other comments or commentary on areas of non-compliance</b>		
11		

---

## C. Next steps

1. Please revise your complaints procedure as soon as possible, in liaison with others in your organisation where necessary, to address any areas of non-compliance identified above. Please ensure the revised complaints procedure is communicated to and used by all Costs Lawyers in your organisation.
2. The CLSB will review the complaints procedure you submit with your next application for a practising certificate to check that appropriate amendments have been made. You do not need to submit your revised complaints procedure prior to this time, but if you wish to submit it in advance we will be pleased to offer advice on compliance.
3. Please note that a failure to cooperate with this audit or to otherwise meet your regulatory obligations could result in [disciplinary action](#) being taken.

Please contact Jacqui Connelly [enquires@clsb.info](mailto:enquires@clsb.info) if you have any queries or need support or further guidance.

Costs Lawyer Standards Board  
Centurion House  
129 Deansgate  
Manchester M3 3WR  
0161 956 8969  
[enquiries@clsb.info](mailto:enquiries@clsb.info)  
[www.clsb.info](http://www.clsb.info)

**CLSB**

---

## Introduction

1. This framework sets out how the CLSB supervises compliance by Costs Lawyers with the Continuing Professional Development (CPD) Rules.
2. The framework forms part of a wider supervision programme, which involves the use of similar frameworks for other supervision activities such as auditing complaints procedures and compliance with the Accredited Costs Lawyer Rules. It should be read in conjunction with the CLSB's [Supervision Policy](#).

## Regulatory context

3. All Costs Lawyers who are regulated by the CLSB must maintain and develop their knowledge and practical skills to ensure they meet the standards expected of them in the Costs Lawyer Code of Conduct.
4. The regulatory requirements relating to CPD are contained in the CPD Rules. New CPD Rules came into force on 1 January 2021. They aim to provide greater flexibility and choice for Costs Lawyers to undertake the right training for their development needs, by adopting a more outcomes-focused approach. The Rules encourage Costs Lawyers to take personal responsibility for identifying gaps in their knowledge and skills, and then targeting their selected learning activities at those areas.
5. The obligations under the CPD Rules can be summarised in four key stages, requiring Costs Lawyers to:
  - identify their training needs and set CPD objectives that are aligned to their individual role and responsibilities and to the professional standards in the CLSB Code of Conduct;
  - undertake relevant CPD activity, achieving a minimum of 12 CPD points each practising year (subject to any exemptions or dispensations);
  - evaluate the effectiveness of their CPD against their objectives;
  - record their CPD (including their objectives and evaluation) and report it to the CLSB upon request.



- 
6. Detailed advice relating to each of the above stages can be found in the CPD guidance note in the Costs Lawyer Handbook. Other supporting materials, such as FAQs and a suggested template for planning and recording CPD, are available on [the CPD page](#) of the CLSB website.

## Reporting CPD

7. Costs Lawyers report their CPD attainment to the CLSB in two stages. First, all Costs Lawyers must list the CPD activities they have undertaken or will undertake in the current practicing year in their annual application for a practicing certificate for the following year (their “summary CPD record”).
8. At that stage, the CLSB checks that each Costs Lawyer’s summary CPD record meets, on its face, the minimum requirements in the CPD Rules (in particular, that 12 CPD points have been attained and that the listed activities were carried out during the relevant practising year). If a Costs Lawyer applies for an exemption or dispensation from these requirements, that application is also assessed at this stage, prior to a practising certificate being issued. If a Costs Lawyer has not met the minimum requirements and does not qualify for an exemption or dispensation, the CLSB may refuse to issue them a practising certificate or may impose conditions on their practising certificate.
9. The second stage of reporting occurs only upon request, when a Costs Lawyer is selected for audit. At this stage, a Costs Lawyer must demonstrate that they completed all the CPD stages; that is, they must produce a record showing the assessment of their CPD needs, their CPD objectives and their evaluation of the activities they carried out against those objectives (their “full CPD record”).
10. The full CPD record may take the format suggested in the CLSB’s template, but this is not compulsory. We are concerned with substance, not form.

---

## Approach to supervision of CPD requirements

11. The CLSB's approach to supervising compliance with the CPD Rules reflects the aims of the new regime and is intended to support a focus on outcomes. Our approach is built on three broad ideas:
  - The purpose of the annual audit is to assess whether the Costs Lawyer has engaged meaningfully with their development needs and has undertaken activities that are relevant to those needs. We acknowledge that there are many different ways a Costs Lawyer can do this successfully.
  - We take a risk-based approach to verifying whether a Costs Lawyer has in fact participated in the CPD activities listed in their summary CPD record, rather than verifying every activity for every audited practitioner.
  - A prima facie assessment of every Costs Lawyer's summary CPD record acts as a "safety net" for promoting compliance with the minimum requirements across the board.
12. In the event the CPD Rules have not been complied with, our initial approach will usually be to discuss the issues with the Costs Lawyer and require them to plan and carry out corrective action. The emphasis is on education rather than sanction, particularly in the early years of the new regime, with the aim of improving standards in an enduring way.
13. We also apply learnings from each annual audit to inform improvements to our CPD guidance and other supporting materials, to help all practitioners comply, whether or not they have been subject to audit.
14. Notwithstanding this approach, non-cooperation, deliberate dishonesty and persistent failure to address issues will be dealt with under the Disciplinary Rules and Procedures. Costs Lawyers are required, under CPD Rule 2.4 and the Code of Conduct, to cooperate with the CLSB in the event of an audit.

## Audit criteria and process

15. The audit process involves assessing whether a Costs Lawyer:

- 
- has actually undertaken the CPD listed in their summary CPD record;
  - has set CPD objectives and evaluated the effectiveness of their CPD in line with the CPD Rules, as demonstrated by their full CPD record.
16. An audit of approximately 20 Costs Lawyers' CPD records is undertaken annually. Costs Lawyers are selected randomly for audit, while ensuring a reasonable balance of organisation type, except that:
- Costs Lawyers will be asked to submit their full CPD record for audit if their CPD record was assessed as needing improvement in the previous year's audit;
  - Costs Lawyers may be specifically included in an audit if there have been past issues with their CPD attainment, and they were notified they might be included in an upcoming audit (for example, because their practising certificate is subject to conditions or they failed a previous audit); and
  - subject to the above, Costs Lawyers who were included in a CPD audit during the preceding three years will not be selected.
17. The CPD audit is divided into two phases. Phase one is the collection of CPD evidence, and phase two is an assessment of the Costs Lawyer's full CPD record.
18. Costs Lawyers selected for audit are sent an email similar to that at Annex A (adapted to their specific circumstances where necessary).

### **Phase one: collection of CPD evidence**

19. The Association of Costs Lawyers (ACL) is asked to validate CPD points listed in the summary CPD records of all audited Costs Lawyers in relation to ACL membership and conference attendance.
20. Each audited Costs Lawyer is then asked to provide:
- a) their full CPD record;
  - b) evidence that they carried out each CPD activity listed in their summary CPD record, other than those validated by ACL; and
  - c) if they do not have evidence of a particular activity as required under (b), a reasonable explanation as to why this is the case.

- 
21. In relation to (b), evidence might include records such as attendance certificates, booking acknowledgements, invoices, screenshots of online events, test results, materials provided to participants, membership communications, account details showing materials that have been accessed, letters from managers or trainers, and so on.
  22. We will accept evidence at face value unless we have reasonable justification to question its veracity. In such cases we can take further steps, like requesting additional information or contacting a service provider directly. This is likely to be an iterative process until satisfactory evidence is received.
  23. In relation to (c), a reasonable explanation might be that no evidence of participation was available from the person or organisation that provided the CPD activity. Whether an explanation is reasonable is assessed on a case-by-case basis, and a risk-based approach is taken. For example, if a Costs Lawyer cooperates with the audit and provides evidence as far as is reasonable for the majority of CPD activities in their summary CPD record, we would not pursue evidence of activities such as listening to podcasts or reading articles. By contrast, if a Costs Lawyer's summary CPD record exclusively contains unevidenced activities such as listening to podcasts or reading articles, some form of evidence will be expected (such as notes or examples of the learning in use).
  24. If a Costs Lawyer cannot evidence a CPD activity listed in their summary CPD record, but can evidence other CPD activity, we will accept that evidence instead (assuming there is no reason to believe the Costs Lawyer was dishonest). Where a Costs Lawyer has listed activities totalling more than 12 CPD points in their summary CPD record, they still only need to provide evidence of the minimum 12 CPD points.

#### **Phase two: assessment of full CPD records**

25. Full CPD records are assessed against the checklist at Annex B, which is based on the provisions of the CPD Rules and guidance note. There are four core requirements noted in the checklist. As there are many acceptable ways to fulfil

---

these requirements, the checklist also contains indicators of compliance, plus space to note additional indicators that might be unique to the individual Costs Lawyer. The checklist then provides for an overall assessment of whether the full CPD record demonstrates that the Costs Lawyer has met their obligations under the CPD Rules, looking at the indicators together in the round.

26. A checklist is completed for each full CPD record that is audited. The completed checklist is stored against the relevant Costs Lawyer's entry in the internal database. Completed checklists may be shared with Costs Lawyers where appropriate, including where the Costs Lawyer asks to see the completed checklist.

## Audit outcomes

27. Once a Costs Lawyer has provided:
- evidence that allows sufficient CPD points to be validated; and
  - a full CPD record that demonstrates compliance with the CPD Rules,
- the Costs Lawyer is considered to have passed the audit and is notified of the outcome by email.
28. If, after liaison with the Costs Lawyer, it is not possible to validate sufficient CPD points to be confident that the required minimum level has been attained, this could result in disciplinary action being taken under the Disciplinary Rules and Procedures, or a practising certificate being revoked or practising conditions being imposed under the Practising Rules. Alternatively, the Costs Lawyer may be advised that they will be audited again within the next three years. The imposition of sanctions will be considered in line with the CLSB's [policy statement on enforcement and sanctions](#).
29. Where a Costs Lawyer's full CPD record does not demonstrate compliance with the CPD Rules in some respect (for example, because not all the required CPD stages have been documented), the Costs Lawyer is:
- informed by email;
  - asked to improve their documentation for the current practising year; and

- 
- notified that they will be asked to submit their improved full CPD record during the following year's CPD audit.

We provide individualised guidance to the Costs Lawyer where appropriate, to help them understand and meet their obligations going forward.

30. The Costs Lawyer's improved full CPD record is then assessed against Annex B during the following year's audit. If changes have been made, but the full CPD record is still insufficient to demonstrate compliance with the CPD Rules, this is communicated to the Costs Lawyer and further changes are requested in the same way and assessed during the following year's audit.
31. Costs Lawyers who have been asked to improve their documentation can submit their revised full CPD record at any time if they wish to seek early feedback about compliance.
32. There is no hard limit on the number of times an individual Costs Lawyer may be asked to make improvements to their full CPD record. Past experience suggests that practitioners are generally keen to cooperate and comply with audit requirements. If it becomes necessary, we will work with a Costs Lawyer to ensure immediate compliance with the CPD Rules, rather than waiting until the following year's audit to assess improvements. Sanctions are most likely to be imposed in cases of deliberate or persistent non-cooperation (again, sanctions will be considered in line with the CLSB's [policy statement on enforcement and sanctions](#)).
33. Learnings from the audit are used to provide feedback to the profession (for example, by highlighting anonymised examples of poor practice and good practice) and to inform our regulatory arrangements and supporting materials as appropriate. Upon completion of the annual audit a report of the outcomes, learnings and proposed actions arising from those learnings is provided to the CLSB board.

---

# Annex A

## Email to Costs Lawyers selected for audit

Dear [name]

As part of its supervision activities, the CLSB undertakes a random audit of compliance with the CPD Rules. This helps to give clients and the wider public confidence that Costs Lawyers' skills and expertise remain relevant and current. You have been [randomly] selected for audit for the practising year just ended (20XX).

Please provide, by [date]:

- (a) Evidence of your participation in the CPD activities listed in your application for this year's practising certificate, attached for reference (your "summary CPD record").
- (b) The document in which you have recorded: your assessment of your CPD needs and associated objectives; your full CPD activity; and your evaluation of the effectiveness of your CPD activity against your objectives (your "full CPD record").

More information on what to provide is set out below. You can also find the CPD Rules, guidance and other supporting materials on our [CPD webpage](#).

### **Providing evidence of the activities in your summary CPD record**

Where available, your evidence should be a certificate of attendance. If a certificate was not provided for a particular activity, you can submit other evidence that shows you participated in the CPD activity (or delivered it, if appropriate).

Examples of evidence include booking acknowledgements, invoices, screenshots of online events, test results, materials provided to participants, membership communications, account details showing materials that have been accessed, and letters from managers or trainers.

---

If no written evidence is available at all, please explain why this is the case.

Please ensure your evidence, for each CPD activity, includes the duration of the activity or the CPD points gained where possible.

If you attained more than 12 CPD points, you only need to provide evidence of 12, in line with the minimum standard set out in the CPD Rules.

Please note that any points obtained through ACL membership or conference attendance have already been validated with ACL directly, and evidence of these need not be submitted.

It would be helpful if you could send your evidence in a single email, rather than multiple emails.

### **Providing your full CPD record**

We will assess your full CPD record to check that it demonstrates your compliance with the CPD Rules. It is not compulsory to use our template record, but you might wish to check your own record against our template and worked example, to ensure you have included the necessary information. The template and example are available on our [CPD webpage](#).

### **What happens next**

Once:

- your CPD points have been validated; and
- your full CPD record has been assessed as demonstrating compliance with the CPD Rules,

we will let you know by email that you have passed the audit.

If your full CPD record is not sufficient to demonstrate compliance with the CPD Rules, we will provide feedback to help you make improvements and will give you more information about the steps we will take to follow up.



---

If you are unable to meet the deadline of [date], please let me know as soon as possible, explaining the reasons, and when you will be able to submit your documentation.

Please note that a failure to cooperate with this audit or to otherwise meet your regulatory obligations could result in [disciplinary action](#) being taken.

Please do not hesitate to contact me if you have any questions or need any support or advice during the audit process.

## Annex B

### Audit Checklist – Full CPD Record

Name and CL number of Costs Lawyer			
Name of organisation (if relevant)			
	Requirement	Indicator	Assessment
1	CPD objectives have been set	Record includes objectives, goals or other forward-looking intentions for learning and development during the year	
2	Objectives have been set in light of responsibilities, and individual training and development needs have been considered	Objectives take account of current role and responsibilities	
		Objectives take account of possible future roles and responsibilities	
		Objectives take account of existing and required skills	
		Objectives include some elements of technical legal knowledge or competence	
		Other indicator(s)	
3	Objectives have been set in light of regulatory principles in the Costs Lawyer <a href="#">Code of Conduct</a>	Objectives are linked to categories of development from the guidance	
		Objectives are linked to specific regulatory principles	
		Other indicator(s)	

4	Effectiveness of the CPD has been evaluated against the CPD objectives	CPD activity is relevant to objectives	
		Each CPD activity and/or categories of CPD activities have been reviewed against objectives	
		Overall achievement of objectives has been evaluated	
		Potential further actions or development areas have been identified for the following year	
		Other indicator(s)	
Overall assessment of whether the full CPD record demonstrates compliance with the CPD Rules			

**CLSB**

---

## Introduction

1. This framework sets out how the CLSB supervises compliance by Accredited Costs Lawyers with the [Accredited Costs Lawyer Rules](#).
2. This framework forms part of a wider supervision programme, which involves the use of similar frameworks for other supervision activities such as auditing complaints procedures and compliance with the CPD Rules. It should be read in conjunction with the CLSB's [Supervision Policy](#).

## Regulatory context

3. Costs Lawyers may apply to be accredited by the CLSB for the purpose of providing continuing professional development (CPD) to other practitioners. Accreditation lasts for three years. There is a [Register of Accredited Costs Lawyers](#) on the CLSB website.
4. Costs Lawyers are only eligible to apply for accreditation if they have been practicing for at least four years post-qualification. They must agree to comply (and must in fact comply) with the Accredited Costs Lawyer Rules for the duration of their accreditation.
5. The accreditation scheme is closely linked to the CLSB's CPD Rules. When the accreditation scheme was first devised, the CPD Rules provided that practitioners could only claim CPD points for attending training delivered by a fellow Costs Lawyer if that Costs Lawyer was accredited. When new CPD Rules were introduced on 1 January 2021, that restriction was removed, but the accreditation scheme was retained for Costs Lawyers who wished to become or remain accredited on a voluntary basis.
6. Today, accreditation indicates to training participants that the Accredited Costs Lawyer will meet certain minimum quality thresholds when delivering CPD activities, giving those participants confidence in their training provider and raising standards in training delivery across the profession as a whole.

- 
7. The aim of supervision in this area is therefore to ensure that the standards established by the Accredited Costs Lawyer Rules are maintained, as this underpins the scheme's credibility and ensures it achieves its purpose.
  8. Rule 5.1 provides that the CLSB may audit CPD provided by an Accredited Costs Lawyer against the requirements in the Accredited Costs Lawyer Rules at any time during the period of accreditation or upon an application for accreditation.

## Approach to supervision

9. Supervision of Accredited Costs Lawyers is undertaken in two ways:
  - Proactive supervision – this occurs whenever an Accredited Costs Lawyer applies for reaccreditation.
  - Reactive supervision – this occurs when a complaint or other event during the period of accreditation gives rise to a concern that an Accredited Costs Lawyer has failed to comply with the Accredited Costs Lawyer Rules, triggering an audit.

### **Proactive supervision – reaccreditation**

10. Accredited Costs Lawyers who apply for a second or subsequent period of accreditation must certify that they have complied with the Accredited Costs Lawyer Rules and must demonstrate that compliance by reference to a training event of their choice, as well as submitting evidence of their training materials.
11. Annex A sets out the questions that Accredited Costs Lawyers must answer when completing an application for reaccreditation. If satisfactory answers are given to these questions, and there is no other reason under the Rules to refuse accreditation, then the Costs Lawyer will be reaccredited.
12. If the answers to the questions reveal non-compliance with the Rules, reveal any of the grounds for termination of accreditation set out in Rule 2.2, or are otherwise insufficient to establish compliance with the Rules, then the CLSB will (at its discretion) either:
  - refuse the application for reaccreditation under Rule 1.3; or

- 
- allow the application for reaccreditation, but proceed to audit the Accredited Costs Lawyer's training.

13. If the CLSB allows the application but proceeds with an audit, the CLSB may begin the audit process at either:
  - the stage described in paragraph 15 below; or
  - the stage described in paragraph 18 below, as the CLSB considers appropriate.

### **Reactive supervision – audit**

14. The primary method of supervision is the proactive supervision described above. However, reactive supervision is also necessary to ensure that any suspected non-compliance can be dealt with appropriately during a period of accreditation. Thus an Accredited Costs Lawyer's training may be audited in the event of a complaint or other concern being raised, which the CLSB believes warrants further investigation, or in the circumstances described in paragraph 12 above.
15. In the event of an audit, the CLSB will request a full list of all training provided by the Costs Lawyer in the previous two years. The CLSB will select one or more training events about which information and materials must be provided, and will ask the Costs Lawyer to demonstrate compliance with the Rules in the same way as in an application for reaccreditation (as shown in Annex A).
16. Where an audit has been triggered by a complaint or concern that relates to a specific training event, the CLSB will usually ask for information and materials for that event.
17. Where the CLSB concludes that the information and materials provided demonstrate compliance with the Rules, the Accredited Costs Lawyer will be advised by email that they have passed the audit.
18. If the audit reveals any non-compliance with the Rules, the CLSB will explain the finding of non-compliance to the Accredited Costs Lawyer and will work with them

---

to ensure compliance going forward. The CLSB may ask the Accredited Costs Lawyer to provide information and materials for a specified number of future training events, until the CLSB is confident that ongoing compliance has been established.

19. Rule 2.2 allows the CLSB to terminate a practitioner's accreditation in certain circumstances, including:
  - failure to cooperate fully with an audit; and
  - failure to otherwise comply with the Accredited Costs Lawyer Rules, if the CLSB believes that the non-compliance is sufficiently serious or irremediable to require termination of the accreditation in the public interest.
20. Non-compliance may be considered irremediable where the Accredited Costs Lawyer indicates that they are unwilling or unable to revise their training provision to comply with the Rules going forward. In this context, unwillingness may be inferred from an Accredited Costs Lawyer's conduct. Such conduct might include, for example, repeated breaches of the same or different Rules following non-compliance being identified and communicated to the Accredited Costs Lawyer by the CLSB.
21. Examples of non-compliance that might be sufficiently serious to require termination of accreditation under Rule 2.2 include:
  - a complete failure to have regard to the Accredited Costs Lawyer Rules when delivering training;
  - a breach that causes material harm to a training participant;
  - a breach that materially undermines the credibility of the accreditation scheme.
22. Where the CLSB concludes that there are grounds to terminate an accreditation for non-compliance under Rule 2.2, the CLSB will remove the Accredited Costs Lawyer's name from the Register of Accredited Costs Lawyers and notify the Costs Lawyer by email.
23. The audit process and possible outcomes are shown diagrammatically in Annex B.



---

## Other activity

24. A failure to comply with the Accredited Costs Lawyer Rules is not, in itself, a regulatory breach. However, where a failure to comply with the Accredited Costs Lawyer Rules amounts to a breach of the CLSB's other regulatory arrangements (for example, if the failure involves conduct that is dishonest or discriminatory), action may be taken under the Disciplinary Rules and Procedures. Failure to cooperate with an audit is also likely to constitute a breach of the Code of Conduct.
25. Periodically, a report of the outcomes of both proactive and reactive supervision is provided to the CLSB board. Learnings from the audit are used to provide feedback to the profession (for example, by highlighting anonymised examples of poor practice and good practice) and to inform ongoing improvements to the accreditation scheme.

---

## Annex A



# Information requested from Accredited Costs Lawyers in applications for reaccreditation

1. Please describe the training that you have delivered in the last three years.
2. Please choose one training event that is typical of the kind of training you usually provide. In relation to that event, please briefly describe how the training meets the requirements of the following rules in the Accredited Costs Lawyer Rules.

Rule 4.1 Consider the following matters and communicate these to participants:

- The purpose and intended outcomes of the training.
- The intended audience, including level of assumed prior knowledge.
- The knowledge and understanding that should be achieved on completion.

Rule 4.2 Ensure the content of the training is:

- Sufficient to meet the purpose and outcomes identified under rule 4.1.
- Relevant to the professional development needs of the intended audience.
- Set at an appropriate level for the intended audience.
- Up to date and accurate.

Rule 4.3 Ensure the method of delivering the training is:

- Appropriate for meeting the purpose and outcomes identified under rule 4.1.
- Safe (particularly if the training is delivered in a physical venue).
- Secure (particularly if the training is delivered virtually).
- User friendly, taking into account the needs of participants.

- 
- Inclusive and non-discriminatory, including by making reasonable adjustments for those with a disability.

Rule 4.7 (only if relevant) Ensure that any person who assists in providing the training (such as a guest speaker) has:

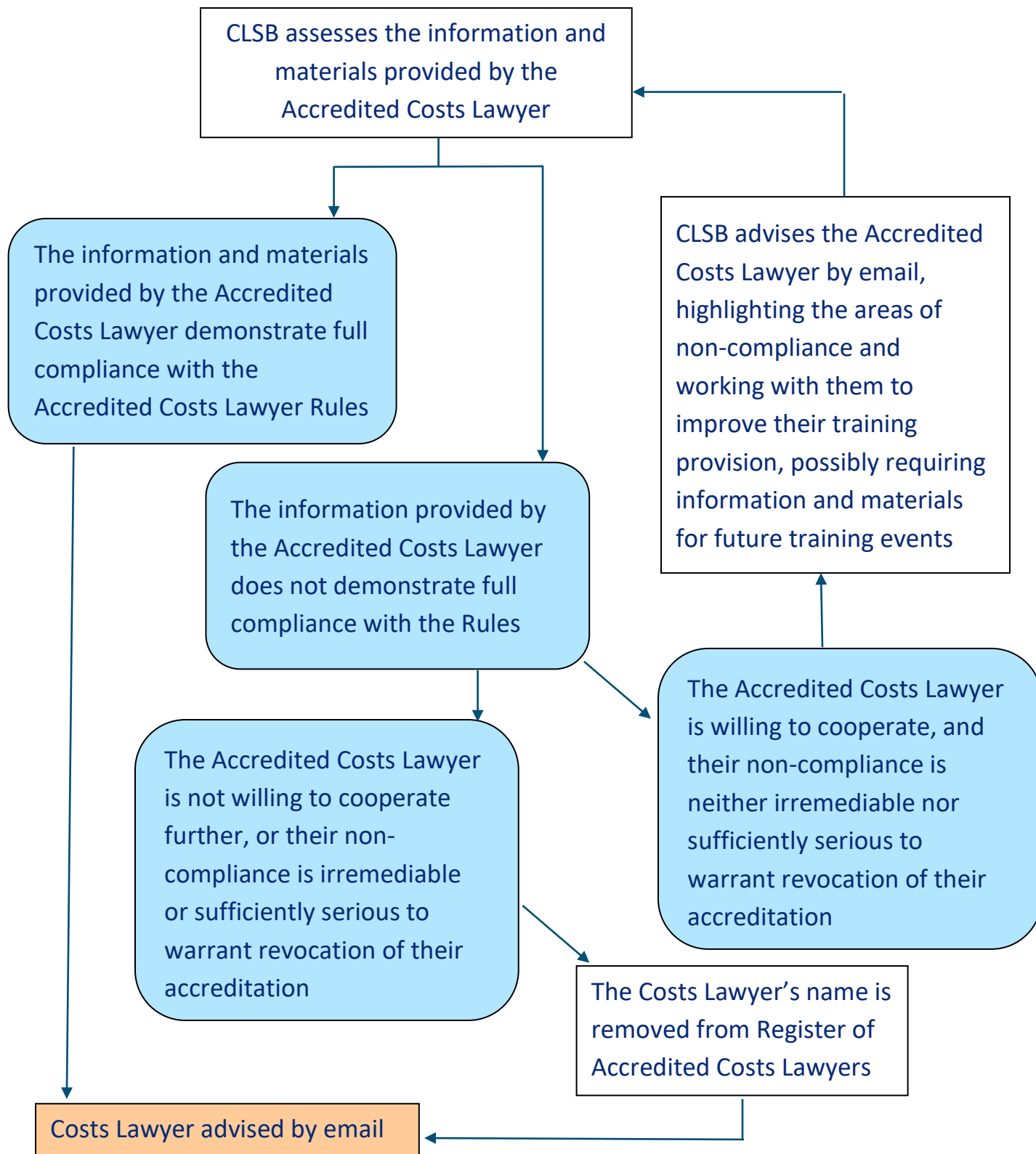
- Relevant qualifications and current experience of the subject matter.
- The necessary skills to deliver the content effectively.

3. Describe how you have acted on feedback received from attendees to improve the training you provide.

4. The following documentation is required as part of your application:

- A sample of training materials you have provided to participants, as required by Rule 4.4. This should be for the training about which you have answered questions 2 and 3.
- A minimum of three examples of written feedback from participants, as required by Rule 4.8, if possible for the same training event for which sample materials are provided.

## Annex B – Audit process and outcome



## Costs Lawyer Standards Board



---

# In this guidance note

Introduction .....	3
The need for a complaints procedure.....	3
Why do I need to have a complaints procedure? .....	3
Do my practising arrangements affect the need to have a complaints procedure? .....	4
Getting started .....	4
What is a complaint?.....	4
What are the requirements for a complaints procedure?.....	5
Providing your complaints procedure .....	5
Should a complaints procedure be published?.....	5
When should I provide a client with my complaints procedure? .....	5
Model complaints procedure.....	6
Handling complaints .....	7
What kind of approach should I take to complaint handling?.....	7
Who should investigate a complaint?.....	8
What if a client makes a verbal expression of dissatisfaction? .....	9
What action must I take on receiving a complaint? .....	9
What remedies should be considered? .....	10
Can I charge for complaint resolution?.....	10
Second-tier complaints .....	10
What is the role of the Legal Ombudsman? .....	10
What is the role of the CLSB?.....	11
When is the Legal Ombudsman or CLSB notified of a complaint? .....	11
What are the timescales for second-tier complaints?.....	11
Do I need to use an approved ADR body as well as the Legal Ombudsman? .....	12
Supervision by the CLSB.....	12
Do I need to lodge my complaints procedure with the CLSB? .....	12
How does the CLSB use data about complaints?.....	13
How can my complaint data assist me as a Costs Lawyer? .....	14
Annex – Model complaints procedure.....	15

---

# Introduction

1. Costs Lawyers who are regulated by the CLSB must have in place, individually or through their employer, an internal procedure for handling complaints from clients or members of the public.
2. Complaints that are made directly to a provider of legal services are often referred to as “first-tier complaints”, while complaints that are escalated to the CLSB or Legal Ombudsman are known as “second-tier complaints”.
3. This guidance note is intended to help Costs Lawyers produce an effective procedure for handling first-tier complaints. It also covers questions that the Legal Ombudsman or CLSB might ask about the adequacy of a first-tier complaints procedure.

## The need for a complaints procedure

### Why do I need to have a complaints procedure?

4. Pursuant to section 112 of the Legal Services Act 2007, it is a requirement that a Costs Lawyer has effective procedures in place for the resolution of service and conduct complaints. The CLSB seeks to ensure that consumers of Costs Lawyers’ services have confidence that any complaints will be handled appropriately, and that a Costs Lawyer’s complaints procedures are fair, transparent and provide effective safeguards.
5. The CLSB’s primary requirements in relation to first-tier complaints procedures and complaint handling are contained in the Costs Lawyer Code of Conduct under Principle 3 (Costs Lawyers must act in the best interests of their client). Pursuant to the Code of Conduct, Costs Lawyers must provide for an effective first-tier complaints procedure which is simple and transparent, ensures that a complaint can be made by any reasonable means, and takes into account the individual needs of clients (in particular the needs of vulnerable clients).

---

## Do my practising arrangements affect the need to have a complaints procedure?

6. You are required to have a complaints procedure in place if you work:

For a firm of Costs Lawyers  
(or similar organisation)

Your employer should have a first-tier complaints procedure in place for your use

As a sole practitioner

You will need to produce your own first-tier complaints procedure

For a firm of solicitors

Your firm should have a first-tier complaints procedure in place that complies with the requirements of the Solicitors Regulation Authority, which the CLSB will accept as being adequate so long as it is provided to your clients in all cases

In-house

But only insofar as you provide costs law services externally to clients other than your employer

## Getting started

### What is a complaint?

7. A complaint means an oral or written expression of dissatisfaction, whereby the complainant communicates a belief that something should have been done differently.
8. A complaint might involve an allegation that the complainant has suffered (or could suffer) financial loss, distress, inconvenience or other detriment. A complaint might also include a request for the situation to be remedied, but this will not always be the case.



---

## What are the requirements for a complaints procedure?

### 9. Your complaints procedure should:

- Be in writing.
- State the date it became effective or was last updated.
- Be clear and simple with as few steps as possible.
- Identify the person to whom the complaint should be made.
- Be reasonable, fair, proportionate and responsive.
- Encourage complaints to be made as soon as possible, and set out the time limits for raising unresolved complaints with the CLSB or the Legal Ombudsman (see paragraphs 34 and 35 below).
- State clearly the timeframe for a complaint to be resolved – this should be within eight weeks of receipt of the complaint.
- Advise that if the complainant is not satisfied with the outcome of the complaint under the complaints procedure, or the complaint has not been resolved within eight weeks, then the complainant has the right to refer a service complaint to the Legal Ombudsman, or refer a conduct complaint to the CLSB within the time limits specified.
- Provide contact details for the Legal Ombudsman and the CLSB.
- Advise the complainant of an approved alternative dispute resolution (ADR) body and state whether you agree to use that body's services.

## Providing your complaints procedure

### Should a complaints procedure be published?

10. Under its 2016 legal services market study, the Competition and Markets Authority recommended that all providers of legal services publish their complaints procedure on their website, where they have one.

### When should I provide a client with my complaints procedure?

11. Research conducted by YouGov and the Legal Ombudsman suggests that many clients do not recall being provided with details of the complaints procedure in the

---

relevant client care letter. It is therefore important to ensure that your client care letter is easy to understand and not overly long, and that the complaints procedure is clearly identifiable. It is also important to remind the client of your complaints procedure as their matter progresses.

12. In particular, your complaints procedure should be provided to your client on each of the following occasions:
- when the client first contracts with you;
  - if an existing client, upon a new instruction at the first appropriate opportunity;
  - in the event of a change of contractual terms;
  - in the event of a change to your complaints procedure;
  - once a complaint has been made;
  - at the conclusion of a complaint;
  - when asked for, at any time.

## **Model complaints procedure**

13. In the Annex to this guidance note you will find a model complaints procedure for you to adapt for your use. It complies with this guidance and can form the basis of your procedure to be published on your website and be provided to your clients.
14. It is not mandatory to use the model complaints procedure; you may use any procedure that complies with this guidance and the Code of Conduct. If you do choose to use the model complaints procedure, you should augment it with relevant information about your specific organisational processes.
15. The model complaints procedure is drafted for use by organisations within which Costs Lawyers practice. If you are a sole practitioner, or you work in an organisation with other types of advisers (such as solicitors or unregulated law costs draftsmen), you might need to adapt the model complaints procedure so that it refers to you personally rather than to your organisation generally, or otherwise accurately

---

informs your clients about the scope of their right to make a second-tier complaint (see paragraphs 28 to 37 below).

16. It might also be useful for you to refer to the Legal Ombudsman's published guidance [Signposting consumers to the Legal Ombudsman](#), which suggests text to use in client care letters and at the conclusion of any complaint.

## Handling complaints

What kind of approach should I take to complaint handling?

17. Research highlights how the type of language used in the complaints process can affect clients' decisions, particularly whether to escalate a complaint. In 2017, the Legal Ombudsman suggested the following tips for handling complaints:
- a) **Keep it simple** - Avoid jargon, pretentious language and using legal or technical terms. They may seem commonplace to you but they can be confusing and intimidating to the client. If you need to use legal or technical terms, you need to explain what they are.
  - b) **Take it seriously** - Ensure that it is clear that you are taking the complaint seriously. Overly informal language or poor grammar / processes can suggest that no formal investigation is underway; avoid phrases such as "I've had a word with (X)".
  - c) **Acknowledge stress or inconvenience caused** - For many, the decision to make a complaint is not taken lightly. Complaining is seen as negative activity, the client may lack confidence in the process and fear jeopardising their relationship with you. It is therefore important to empathise with the situation they are in and reassure them that you understand their position.
  - d) **Don't be afraid to apologise** - Start with a proper apology and avoid burying it at the end of lengthy letters. If you've made a mistake say 'sorry' without caveats and conditions. Justifying what has happened can play to client fears that the complaint handling stage will be subject to the same negativity as the

---

original transaction. Avoid subjective sentences such as “I’m sorry you feel this way” or “I’m sorry you have felt the need to complain”.

- e) **Appreciate feedback** - Demonstrate to the client that you appreciate their feedback and the opportunity to improve your service. There can be positive aspects of complaining, this can also reassure the client that their complaint is being taken seriously. For example, “We assure you that client satisfaction is a key priority for us and we want the service you receive to reflect that principle”.
- f) **Be clear** - When responding, detail the client’s concerns one by one. Use bold headings to structure the response around the details of the complaint. It is also important to give an explanation of what evidence you have looked at and what your conclusions are. Ensure that, when you signpost a client to the CLSB (conduct complaints) or Legal Ombudsman (service complaints), the information is clear and easy to find. This will reassure complainants and give them a sense of security that there are other avenues.

## Who should investigate a complaint?

- 18. YouGov and Legal Ombudsman research has shown that clients would like someone independent to look into their complaint. Where reasonably possible, the complaint investigator should be someone:
  - not involved in the matter leading to the complaint;
  - with the appropriate seniority, training and understanding to provide a good complaint handling process.
- 19. If you are a sole practitioner, you may have to deal with a complaint yourself, but you should consider what arrangements you could put in place. It might be possible for you to arrange for another practitioner, perhaps via the Association of Costs Lawyers, to handle any complaints about your practice or to review your handling of any complaint (in which case you should set out this additional step in your complaints procedure).

---

## What if a client makes a verbal expression of dissatisfaction?

20. YouGov and Legal Ombudsman research has shown that many verbal complaints go unrecorded. However, 83% of those surveyed expected their legal adviser to act on their expression of dissatisfaction. In fact, it was found that clients who complain verbally (only) are more likely to want a simple explanation or apology rather than to invoke a formal complaints procedure.
21. You should therefore respond to a verbal expression of dissatisfaction by acknowledging the issue and asking the complainant what they are looking for to resolve their concerns. It will usually be appropriate to respond in writing and include an explanation and apology. You should also remind the complainant of your formal complaints procedure, should they wish to take the matter further.

## What action must I take on receiving a complaint?

22. The investigator of a complaint should:
  - acknowledge receipt of the complaint in writing;
  - investigate thoroughly and promptly;
  - record their management of the complaint and their findings;
  - keep their investigation file separate from the main client file;
  - advise the Costs Lawyer of the outcome of the investigation;
  - ensure the complainant is advised in writing of the outcome of the investigation within eight weeks of receipt of the complaint;
  - ensure any remedial action is followed through.
23. Any decision made in the context of investigating a complaint should be impartial and based on the evidence, without bias or prejudice.
24. Complainants should always be informed in writing once you feel your first-tier complaints procedure has been exhausted.

---

## What remedies should be considered?

25. If appropriate following an investigation, one or more remedies should be offered to the complainant. There are numerous remedies that could be considered, including an apology, an explanation of what went wrong, financial compensation, repeat provision of the relevant service, and remedial steps to reduce the impact on the complainant. The investigator should consider all appropriate remedies, even if they were not expressly sought by the complainant.
26. An investigation may also identify areas in which service could be improved. If so, ways of working should be revised to avoid further poor outcomes in the future.

## Can I charge for complaint resolution?

27. The Legal Services Board has issued guidance on section 112 of the Legal Services Act 2007 stating that complaint resolution should be free of charge. The CLSB would not expect a Costs Lawyer to charge for complaint resolution in relation to the Costs Lawyer's own service provision.

# Second-tier complaints

## What is the role of the Legal Ombudsman?

28. The Legal Ombudsman deals with service complaints about Costs Lawyers in an independent and objective way. The Legal Ombudsman can award a variety of remedies, including financial compensation. A complainant can accept the Legal Ombudsman's determination, in which case it is binding on the Costs Lawyer. However, the complainant does not have to accept the determination and can pursue redress via other means (including the courts).
29. Before the Legal Ombudsman will consider a service complaint, the Costs Lawyer must first have tried to resolve the complaint themselves under their first-tier complaints procedure. Should a service complaint be referred to the Legal

---

Ombudsman, they will look not only at the substance of the complaint but also the way in which the complaint was initially dealt with by the Costs Lawyer.

## What is the role of the CLSB?

30. The CLSB deals with conduct complaints about Costs Lawyers in accordance with its prevailing Disciplinary Rules and Procedures. The Costs Lawyer should first try to resolve the complaint themselves under their first-tier complaints procedure.
31. If a Costs Lawyer does not have a complaints procedure, does not follow their complaints procedure, or otherwise deals poorly with a complaint, this may give rise to a conduct issue in itself regardless of the nature of the underlying complaint.

## When is the Legal Ombudsman or CLSB notified of a complaint?

32. There is no requirement for you to notify the Legal Ombudsman or CLSB upon initially receiving a complaint under your complaints procedure. It is anticipated that complaints will be satisfactorily resolved at that level. It is for the complainant to refer the matter to either the Legal Ombudsman or CLSB in the event they are not happy with the outcome or the matter has not been resolved within eight weeks. The CLSB will, however, ask Costs Lawyers to report data about first-tier complaints annually for supervision purposes.
33. Where a complaint is not resolved by the Costs Lawyer, it is for the complainant to identify whether they have a service complaint (for the Legal Ombudsman) or a conduct complaint (for the CLSB). However, should the CLSB receive a complaint that is not in its jurisdiction it may refer the matter to the Legal Ombudsman, and vice versa. If a complaint involves a mix of service and conduct issues, the Legal Ombudsman will usually consider the complaint in the first instance.

## What are the timescales for second-tier complaints?

34. Second-tier service complaints to the Legal Ombudsman must ordinarily be made within six months of the Costs Lawyer providing a final response to the complaint at first-tier, and no more than six years from the date of the matter giving rise to

---

the complaint, or no more than three years from when the complainant should reasonably have known there was cause for complaint.

35. Second-tier conduct complaints to the CLSB must ordinarily be made within 12 months of the date on which the matters giving rise to the complaint occurred or the date on which the complainant first became aware that they had grounds for the complaint. This period can be extended in exceptional circumstances so you should encourage complainants to act promptly, but should not imply there are no circumstances in which the CLSB will consider a complaint outside the timescale of 12 months.

**Do I need to use an approved ADR body as well as the Legal Ombudsman?**

36. Under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, you should inform consumers about their ability to escalate their complaint to an approved alternative dispute resolution (ADR) body upon exhaustion of your first-tier complaints process. The Legal Ombudsman is not currently an approved ADR body for these purposes. A list of approved ADR bodies can be found on the Trading Standards website.
37. Despite the requirement to provide this information, you do not have to agree to engage with the ADR processes of an approved ADR body. You should therefore inform consumers of the name and website address of an approved ADR body that would be competent to deal with the complaint and state whether you agree to use the ADR scheme operated by that body.

## **Supervision by the CLSB**

**Do I need to lodge my complaints procedure with the CLSB?**

38. Yes. Since 2012, all Costs Lawyers have been required to file their complaints procedure with their annual application for a practising certificate. This allows the

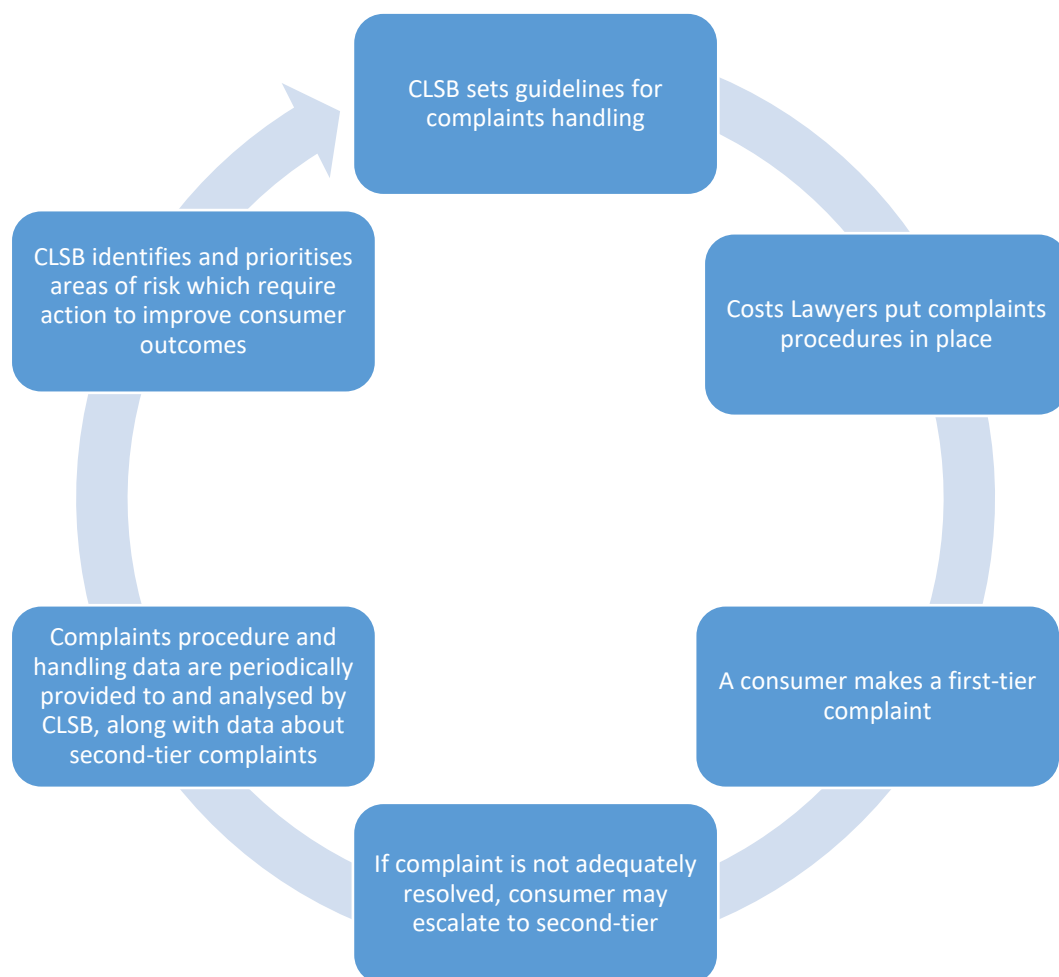


---

CLSB to supervise compliance with the obligation to maintain an appropriate complaints procedure.

## How does the CLSB use data about complaints?

39. The CLSB collates information about the volume and type of complaints dealt with by individual Costs Lawyers, along with Costs Lawyers' complaints procedures, data sourced from the Legal Ombudsman and data about complaints to the CLSB. The complaints data loop below shows how this information informs the risk assessment process, enabling the CLSB to target its regulatory interventions in areas where consumer outcomes can most effectively be improved.



---

## How can my complaint data assist me as a Costs Lawyer?

40. Analysis of the number of complaints, the nature of complaints and their outcomes will assist you in improving the effectiveness of the service you offer to your clients. Consider taking further steps to better understand your clients' expectations, such as collecting feedback throughout a matter and at its conclusion.

---

# Annex – Model complaints procedure

Date: [X]

Version: [X]

## How we handle formal complaints

We pride ourselves on providing an excellent service, but even in the best run businesses, mistakes, delays and misunderstandings can happen.

If something has gone wrong, please tell us about it so we can put things right and improve what we do in the future.

Please tell us about any problems as soon as they arise, so we have the best chance of fixing them.

You should not feel obliged to use this formal complaints procedure – you may tell us about a problem informally and we will do our best to put things right – but if you do find yourself in the position of wishing to raise a formal complaint with us then please follow the steps below.

We will never charge you for the time it takes us to handle your complaint.

## How to complain

You can make a complaint either in writing or by telephone by contacting the following people:

By telephone: [Name], [Number]

In writing: [Name], [Address], [Email]

Please tell us who or what the complaint is about and when the problem happened or when the problem started if it is still ongoing, and how you would like us to communicate with you (by telephone, letter or email).

---

## What happens next

We will acknowledge your complaint in writing. We will try to do this within [X] business days.

We will look into the details of your complaint and consider what we need to do to put things right, which might include:

- explaining what we think happened;
- apologising to you;
- repeating work, or parts of work, we did for you;
- reviewing our procedures so we do not repeat a mistake;
- reducing our fees;
- compensating you for any loss we have caused you to suffer.

Once we have investigated your complaint we will reply to you. We will do this within eight weeks of when you first complained to us. If you have asked us to contact you by telephone we will do so but we will also write to you.

## The Legal Ombudsman

If we have been unable to put things right, or we have not resolved your complaint within eight weeks, then you can have the complaint independently looked at by the Legal Ombudsman. The Legal Ombudsman investigates problems about poor service from lawyers.

Before accepting a complaint for investigation the Legal Ombudsman will check that you have tried to resolve your complaint with us first. If you have, then you must take your complaint to the Legal Ombudsman:

- within six months of receiving a final response to your complaint; and
- no more than six years from the date of the act/omission giving rise to the complaint; or
- no more than three years from when you should reasonably have known there was cause for complaint.

---

The Legal Ombudsman can be contacted using the following details:

Address: PO Box 6806, Wolverhampton WV1 9WJ  
Telephone: 0300 555 0333  
Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)  
Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

There are other alternative dispute resolution schemes that exist such as [give the name of an approved ADR body] should both we and you wish to use such a scheme. Generally, we [do/do not] choose to use these schemes.

## The Costs Lawyer Standards Board (CLSB)

Individual Costs Lawyers who work for us are regulated by the CLSB and the CLSB can investigate complaints about those Costs Lawyers' professional conduct. If you wish to complain about a Costs Lawyer's conduct, you should contact the CLSB promptly.

The CLSB will consider complaints made within 12 months of the date on which the matters giving rise to the complaint occurred or the date on which the complainant first became aware that they had grounds for the complaint. This period can be extended in exceptional circumstances. The CLSB will usually expect you to give us a chance to resolve your complaint first.

The CLSB can be contacted using the following details:

Address: Centurion House, 129 Deansgate, Manchester, M3 3WR  
Telephone: 0161 214 7904  
Email: [enquiries@clsb.info](mailto:enquiries@clsb.info)  
Website: [www.clsb.info](http://www.clsb.info)

## **POLICY ON EXPECTATIONS OF A COMPLAINANT**

### **Costs Lawyer Standards Board**

**Effective date: 24 October 2017**

#### **Introduction**

This policy has been written to provide clarity on what a complainant can expect from the CLSB and what the CLSB expects of a complainant in terms of evidence and co-operation when making a complaint to the Costs Lawyer Standards Board (CLSB) about a Costs Lawyer, the CLSB or a CLSB employee.

This policy should be read in conjunction with the following, which can be located on the CLSB website at [www.clsb.info](http://www.clsb.info) which set out process and defined timelines:

Complaint against a Costs Lawyer: Disciplinary Rules & Procedure  
Complaint against the CLSB: CLSB policy on Internal Complaint Handling  
Complaint against a CLSB employee: CLSB policy on Internal Complaint Handling

#### **1. A complainant**

- 1.1 A complaint that one or more of the principles in the Costs Lawyer Code of Conduct has been breached may be made by, for example, a member of the public, another regulated legal professional, a business or a member of the judiciary.

#### **2. What the CLSB will not do**

The CLSB will not:

- 2.1 Make a case for a complainant as to do so would prejudice impartiality. This policy therefore seeks to assist a complainant in understanding how they must present their complaint.
- 2.2 Influence, interfere with, delay or prejudice current legal proceedings either directly or indirectly. Where a professional conduct complaint has been brought to the attention of the CLSB by an opposing party during the course of legal proceedings, the correct recourse will be to the Court in those proceedings, not to the CLSB. Nothing in this policy will stop the complaint being referred to the CLSB once those legal proceedings have been fully completed.

#### **3. What to expect**

- 3.1 The CLSB is committed to providing a fair, efficient and effective service. To do so, a complainant must use all reasonable endeavours to assist the CLSB and behave in a reasonable manner when communicating with the CLSB, its employees and agents e.g. independent investigator, and not to act in a way that will impede the handling of the complaint or the CLSB service to others.

3.2 On making a complaint, the complainant **agrees to**:

- (i) Make out their complaint in full in a single document which sets out the nature of the allegation(s) clearly and concisely attaching only relevant, cross referenced, documentary evidence which supports the allegation(s) being made.
- (ii) Bring to the attention of the CLSB any particular communication needs e.g. disability, condition or illness.
- (iii) Respect and adhere to prevailing and applicable CLSB policy and rules.
- (iv) Be wholly truthful in written and verbal representations made to the CLSB.
- (v) Co-operate fully with the CLSB, responding to CLSB communication in a reasonable and concise manner providing only relevant information/documentation.
- (vi) Behave reasonably at all times (examples of unreasonable behaviour includes verbal or written actions considered by the CLSB to be aggressive, bullying, offensive, harassing, unreasonable and unreasonably persistent).

3.3 On making a complaint, the complainant **agrees not to**:

- (i) Be evasive in answering questions put to them.
- (ii) Misrepresent, interfere with or alter evidence.
- (iii) Change the basis of the complaint(s) once the CLSB has commenced its defined process.

**4. Consequences of failure to comply with complainant expectations**

4.1 In the event a complainant does not comply with 3.2 (vi) above, the CLSB reserves the right to take appropriate action having regard to all the circumstances, which may include one or more of the following:

- (i) Not reply to emails, letters or phone calls.
- (ii) Terminate a phone call.
- (iii) Refuse a complaint.
- (iv) Close a complaint.
- (v) Report the matter to the Police in the event the actions of the complainant are considered by the CLSB to be criminal.
- (vi) Take legal action e.g. injunction to restrain unreasonable behaviour.
- (vii) Report the behaviour of a complainant who is regulated under the Legal Services Act 2007 to their regulator.

4.2 In the event a complainant does not comply with 3.2 (i), (iii), (iv), (v) and 3.3 (i), (ii), (iii) above, the CLSB reserves the right to take appropriate action having regard to all the circumstances, which may include one or more of the following:

- (i) Refuse a complaint.
- (ii) Close a complaint.
- (iii) Report the matter to the Police in the event the actions of the complainant are considered by the CLSB to be criminal.

- (iv) Report the behaviour of a complainant who is regulated under the Legal Services Act 2007 to their regulator.

**END**



## **Proposed web content: Guidelines for complainants**

### **Unreasonable behaviour**

We understand that the problems leading to a complaint about a Costs Lawyer might have been frustrating or upsetting. We will always take this into account, listen carefully to your concerns and treat you with courtesy and respect at all times.

Our staff also deserve to be treated with courtesy and respect, so in the very rare cases that frustration and upset turns into unreasonable behaviour, we will take action to protect our staff.

We won't accept behaviour that we consider to be violent, insulting or threatening. This includes using offensive language, any form of discrimination, or any kind of threat.

We will always try to be clear about what you can expect from us. This includes when you can expect a response from us and how frequently we will provide updates. However, we won't respond to unreasonable demands that might take the form of: insisting on an action in an unrealistic timescale; insisting that someone in particular deals with a matter when they are unavailable; making excessive contact with us that impacts on our ability to do our job.

Where we find behaviour unreasonable, we will first try to resolve the matter by explaining why we think that is the case. If we are unable to resolve the problem this way, we might take further action, which could include: communicating only in writing; refusing to communicate further on certain aspects at all; deciding we will stop looking into the complaint altogether.

### **Declining to investigate a complaint, or deciding to stop investigating a complaint**

We explain about our regulatory objectives and mission [here](#) and why it is essential that we put our funds to work in an efficient and impactful way, identifying key areas of risk within the profession and targeting these to achieve the best possible outcomes for consumers of Costs Lawyers' services and the wider public.

This means that we may not look into every complaint raised with us, or continue an investigation into every complaint. We will concentrate our efforts on complaints where it seems likely that:

- there has been a breach of our rules, or there is a risk to clients, the public or the public interest; and
- the matter is sufficiently serious that we may take action; and
- it is likely that the matter can be adequately investigated and evidenced.

---

# The Costs Lawyer profession in 2020

---



Data to December 2020

Costs Lawyer Standards Board

CLSB  
|||

---

# In this report

Introduction..... 3

About Costs Lawyers..... 4

    Age..... 4

    Number of years in the profession..... 4

About Costs Lawyers’ practice ..... 5

    Organisation type ..... 5

    Insurance ..... 5

    Complaints..... 6

About Costs Lawyers’ clients..... 7

    Sources of instructions in 2020 ..... 7

    Legal aid..... 8

    Pro bono work ..... 8

    Vulnerable clients ..... 9

About the diversity of Costs Lawyers ..... 10

---

# Introduction

The CLSB holds various types of data about the Costs Lawyer profession. We collect and analyse this data for a variety of purposes, such as:

- understanding the nature of our regulated community, including the service that Costs Lawyers provide, the challenges they face and how they interact with consumers and the public
- identifying areas of risk so that we can tailor our regulatory interventions accordingly
- monitoring the diversity of the profession and barriers to entry, promotion or inclusion
- supervising compliance with our regulatory rules
- sharing intelligence with other organisations, such as the Association of Costs Lawyers, to help with initiatives for the benefit of Costs Lawyers and the public.

Data we collect includes:

- information about the nature of Costs Lawyers' practice as part of their annual application for a practising certificate (the regulatory return)
- diversity statistics
- supervision and disciplinary information
- ad hoc information to help us fulfil our statutory obligations, such as opinions, feedback and predictions about market impacts.

The data we hold is [available on our website](#) or by [contacting us](#). This report provides an annual summary.

Throughout this report, data is presented in a series of tables. Unless otherwise indicated, the figures in the tables show the percentage of Costs Lawyers that fall into each relevant category. By way of example, in the table on the next page that provides statistics on the age profile of the profession, the figures indicate that 8.5% of Costs Lawyers were aged between 20 and 29 in 2017. If you have any questions about interpreting the data, please [contact us](#).

---

# About Costs Lawyers

## Age

Over the last few years we have seen a gradual increase in the average age of Costs Lawyers. The route of entry into the profession was closed from 2017 to 2019, but reopened in 2020, when there were 18 new qualifiers. This will have an impact on the trend in due course.

Year	20-29	30-39	40-49	50-59	60+	Age not given
2017	8.5	37	26	18	8	2.5
2018	9.5	36.8	27.1	16.6	8.5	1.5
2019	7.4	37.3	27.2	18.2	9.2	1.5
2020	4.3	37.7	29	18.9	9	1

## Number of years in the profession

This data has been collected since 2017. The fall in the percentage of Costs Lawyers who have been in the profession for up to 5 years over the period reflects that the route of entry into the profession was closed from 2017 to 2019. We expect this to rise as new Costs Lawyers qualify in future.

Year	Up to 5 years	6-15 years	16-25 years	26-40 years	40+ years
2017	8	36	32	21	2
2018	7	39	33	19	2
2019	3	39	33	20	2
2020	2	40	32	23	3

For information about the diversity of the Costs Lawyer profession please see page 10 of this document.

---

# About Costs Lawyers' practice

## Organisation type

Since 2011, the number of Costs Lawyers in each type of practice has fluctuated year on year. Overall, the proportions of Costs Lawyers working for costs law firms and as sole practitioners have fallen, while the number working in firms regulated by the Solicitors Regulation Authority (SRA) has increased. Since 2018, more Costs Lawyers have been working in SRA regulated firms than any other type of organisation. In 2020, just under half of all Costs Lawyers worked in SRA regulated firms.

Year	Unregulated costs law firm	Sole practitioner	SRA regulated firm	In-house
2011	53.8	16.1	26.5	
2012	48.2	17.4	31	
2013	42	19.4	29.2	
2014	44	17.8	34.3	
2015	41	15.8	33.7	
2016	38	17.7	37.2	
2017	43.1	14.5	37.8	
2018	39.6	14.1	41	
2019	39.7	11.8	41.2	
2020	35.4	13.6	47	3

Note: In-house data is not available prior to 2020. Figures do not always total 100% because prior to 2020 data was not recorded for Costs Lawyers not working exclusively in one of the first three categories, and it was not obligatory for practitioners to provide this information.

## Insurance

The CLSB collects data relating to the professional indemnity insurance policies held by Costs Lawyers working as sole practitioners or for costs law firms not regulated by the SRA. The minimum level of cover prescribed in the Practising Rules is £100,000.

---

Since 2014, the percentage of Costs Lawyers with higher levels of cover has been increasing. The percentage with the highest level of cover (£2m or more) has almost doubled between 2014 and 2020. Since 2016, more Costs Lawyers have the highest level of cover than any other range.

Cover level	2014	2015	2016	2017	2018	2020
£100,000	22.1	17.5	18.6	16	10.64	10.06
£100,001-£999,999	32	28.9	26.6	23.7	23.3	24.58
£1,000,000-£1,999,999	24.9	25.8	25.1	26.5	29.4	26.54
£2,000,000 or over	20.4	28	29.5	33.9	37.1	38.83

Note: This data was not collected in 2019.

## Complaints

The number of complaints made at first tier remains low, which could be explained by a variety of factors such as strong client satisfaction, high levels of informal resolution or a lack of awareness about how to complain.

Year	Number of first tier complaints made
2011	7
2012	Not collected
2013	Not collected
2014	Not collected
2015	6
2016	1
2017	3
2018	3
2019	5
2020	3

Similarly low levels of complaints are formally escalated to the second tier (namely the CLSB in relation to conduct complaints and the Legal Ombudsman in relation to service quality complaints).

Year	Number of second tier complaints upheld	
	CLSB (Conduct)	Legal Ombudsman (Service)
2011	0	0
2012	2	1
2013	0	1
2014	1	0
2015	0	1
2016	0	0
2017	0	0
2018	2	0
2019	1	0
2020	0	0

## About Costs Lawyers' clients

### Sources of instructions in 2020

From 2020, we began to ask Costs Lawyers about the sources of their instructions as a proportion of total work. (Although we had asked questions about number of cases from different sources in the past this data is not directly comparable.)

Proportion of instructions from each client type	Lay clients	Legal services providers	Corporate
0%	80.77	22.34	71.75
1-10%	15.68	2.22	8.14
11-25%	1.78	1.48	2.66
26-50%	1.18	3.4	3.4
51-75%	0	2.66	1.18
76-90%	0.15	6.66	1.48
91-99%	0.3	10.5	1.92
100%	0.74	50.74	9.47

In 2020 over half of all Costs Lawyers were instructed exclusively by other legal services providers, such as solicitors or barristers. That is, they received instructions from a fellow



practitioner on behalf of, or for the benefit of, an underlying client. Less than 20% of Costs Lawyers received any instructions at all from lay (individual) clients, and less than 5% received more than 10% of their instructions from lay clients. Less than 30% of the profession received instructions directly from corporate clients.

## Legal aid

Between 2012 and 2020 the proportion of the profession undertaking exclusively legal aid work has doubled from 2.5% to 5%. In the same period, the proportion of Costs Lawyers who do not undertake any legal aid work at all has almost doubled, from 38.8% to 70.2%. This might suggest that legal aid work is becoming increasingly specialist.

Year	Proportion of workload comprising legal aid work					
	0%	1-25%	26-50%	51-75%	76-99%	100%
2012	38.8	28.7	5.2	8.9	9.9	2.5
2013	46.7	23.4	4.7	7.9	8.3	2.9
2014	49.1	27.4	3.4	6.6	6.7	3.2
2015	49.8	23.7	5	1.6	6.3	4.1
2016	50.3	15.6	1.4	3.5	2.6	3.8
2017	56.1	20.8	3.4	2.4	5.9	2.1
2018	55.2	24	2.8	3.2	5.1	2.8
2019	51.3	22.3	2.97	3.12	4.3	3.7
2020	70.2	17.3	2.4	2.8	1.93	5

Note: Where years do not total 100%, some Costs Lawyers did not provide this information.

## Pro bono work

The number of pro bono cases undertaken by Costs Lawyers rose between 2015 and 2019. In 2019 there were 97 pro bono cases in total, and 45 of these were dealt with by one Costs Lawyer; the next largest number of cases was just 6. The overall trend is likely to be explained by the changing nature of traditional work areas and the rise in litigants in person using the justice system generally.

---

Year	Number of cases
2015	0
2016	4
2017	77
2018	61
2019	97

To better capture how the trend may be changing over time, from 2020 we asked Costs Lawyers to report on the percentage of their instructions that were pro bono.

Proportion of workload comprising pro bono cases in 2020	% of the profession
0%	97.19
1-25%	2.66
26-50%	0
51-75%	0
76-100%	0.15

## Vulnerable clients

This data has been collected since 2016. Generally Costs Lawyers deal with very few vulnerable clients, which reflects the low number of instructions received directly from lay (individual) clients. In 2020, 95% of one Costs Lawyer's clients were vulnerable, but no other Costs Lawyer reported more than 30% of their clients having vulnerabilities. From 2020 the data has been collected as a percentage of total instructions rather than an absolute number of instructions to improve comparability. The nature of vulnerabilities in 2020 included clients who were protected parties, patients, elderly or who had been unrepresented during the substantive stages of a dispute.

Year	Number of vulnerable clients
2016	2
2017	4
2018	16
2019	13

Proportion of vulnerable clients in 2020	% of the profession
0%	98.52
1 – 25%	1.04
26 – 50%	0.3
51 – 75%	0
76 -100%	0.15

## About the diversity of Costs Lawyers

Diversity data is collected from practitioners on a voluntary basis. Surveys were undertaken every three years up to 2019. The data below was collected in a survey carried out in November and December 2020 as part of the annual practicing certificate renewal process. 43.5% of Costs Lawyers completed the survey. The data collected is not directly comparable to that collected in previous surveys, but provides a benchmark for comparative analysis going forward.

What is your gender identity?		
Answer Choices	Responses	
Woman (including trans woman)	45.92%	135
Man (including trans man)	51.70%	152
Non-binary	0.00%	0
I prefer not to say	2.04%	6
I identify as (self specified)	0.34%	1
	Answered	294
	Skipped	0

Is your gender identity the same as that which you were assigned at birth?		
Answer Choices	Responses	
Yes	97.96%	288
No	0.00%	0
I prefer not to say	2.04%	6
	Answered	294
	Skipped	0

What is your sexual orientation?		
Answer Choices	Responses	
Bisexual	1.02%	3
Gay man	3.06%	9
Gay woman or lesbian	1.70%	5
Heterosexual or straight	89.12%	262
I prefer not to say	5.10%	15
I identify as (self specified)	0.00%	0
	Answered	294
	Skipped	0

Which of the following best describes your ethnic group or background?		
Answer Choices	Responses	
Asian / Asian British (Bangladeshi, Chinese, Indian, Pakistani, other Asian ethnic group)	3.40%	10
Black / Black British (African, Caribbean, other Black ethnic group)	1.36%	4
Mixed / multiple ethnic group (any mix of Asian, Black and/or White ethnic groups)	3.06%	9
White / White British (English, Welsh, Northern Irish, Scottish, Gypsy or Irish Traveller, European, other White ethnic group)	89.80%	264
I prefer not to say	2.04%	6
Other (please describe)	0.34%	1
	Answered	294
	Skipped	0

Do you consider yourself to have a disability?		
Answer Choices	Responses	
Yes - a mental disability	1.70%	5
Yes - a physical disability	5.10%	15
Yes - a social disability	0.00%	0
No	90.14%	265
I prefer not to say	4.08%	12
	Answered	294
	Skipped	0

If you have a disability, is your ability to practise as a Costs Lawyer limited by that disability?		
Answer Choices	Responses	
Not applicable (no disability)	70.98%	159
Yes - limited a lot	0.00%	0
Yes - limited a little	3.13%	7
No	22.77%	51
I prefer not to say	3.13%	7
	Answered	224
	Skipped	70

Do you identify with any of the following religions?		
Answer Choices	Responses	
Atheism	10.54%	31
Buddhism	0.34%	1
Christianity	42.52%	125
Hinduism	0.00%	0
Islam	1.02%	3
Judaism	1.02%	3
No religion / agnosticism	33.67%	99
I prefer not to say	9.18%	27
Other (please describe)	2.72%	8
	Answered	294
	Skipped	0

Are you a primary carer for a child or children under 18?		
Answer Choices	Responses	
No	56.12%	165
Yes	41.50%	122
I prefer not to say	2.38%	7
	Answered	294
	Skipped	0

Do you care for someone with long-term physical or mental ill-health or disability (on an unpaid basis)?		
Answer Choices	Responses	
No	87.41%	257
Yes - less than 20 hours per week	6.80%	20
Yes - between 20 and 50 hours per week	1.36%	4
Yes - more than 50 hours per week	1.02%	3
I prefer not to say	3.40%	10
	Answered	294
	Skipped	0

What type of school did you mainly attend between ages 11 and 16?		
Answer Choices	Responses	
State-run or state-funded: selective on academic, faith or other grounds	22.45%	66
State-run or state-funded: non-selective	60.20%	177
Independent / fee-paying: bursary	6.12%	18
Independent / fee-paying: no bursary	5.10%	15
Attended school outside the UK	2.72%	8
Other	0.00%	0
I prefer not to say	3.40%	10
	Answered	294

What is the highest level of qualifications achieved by any of your parents or guardians by the time you were 18?		
Answer Choices	Responses	
At least one had a degree qualification	20.75%	61
Qualifications below degree level	43.88%	129
No formal qualifications	22.45%	66
Other	0.00%	0
Not sure / Not applicable	6.12%	18
I prefer not to say	6.80%	20
	Answered	294
	Skipped	0

For how many years have you been practising as an authorised Costs Lawyer?		
Answer Choices	Responses	
Up to 5 years	29.59%	87
6 to 15 years	41.84%	123
16 to 25 years	14.97%	44
26 to 40 years	11.56%	34
More than 40 years	0.68%	2
I prefer not to say	1.36%	4
	Answered	294
	Skipped	0

Which of the following best describes your current job level?		
Answer Choices	Responses	
Practitioner	50.34%	148
Manager	20.75%	61
Business owner	17.69%	52
I prefer not to say	5.10%	15
Other (please specify)	6.12%	18
	Answered	294
	Skipped	0



**LEGAL SERVICES  
BOARD**

The Chair's Office  
Legal Services Board  
3rd Floor  
The Rookery  
2 Dyott Street  
London  
WC1A 1DE

T 020 7271 0043

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

29<sup>th</sup> March 2021

Dear Chair

I am writing to follow up our discussion at the annual Chairs' meeting last month. I'm grateful for the constructive response to the proposition that collaborating with purpose might be a way for us to achieve more for the public and consumers than we can acting alone. I also think it helpful that we managed to establish greater clarity around the LSB's position regarding a single regulator, and I hope we can move forward a little less encumbered by that particular issue.

I said I would write to set a process of identifying areas and issues where a common approach might deliver benefits, with a view to selecting perhaps a small number of initiatives to trial ways of working.

In setting out these areas in the (non-exhaustive) list below, I have taken account of examples raised at our meeting, of discussions that some of you have had with us and each other in the intervening period, of the CMA's recommendation in its market report of December last year and various other developments in the sector. And I expect that it will suggest itself to you all, as it did to us, that there is a great deal of interconnection between all the areas on the emerging list.

The list of potential topics includes, in no particular order:

Establishing and convening a joint frontline regulators research forum to share research planning and the outcome of research, adding value and reducing duplication. This might over time develop into pooled commissioning and procurement activity, with a view to generating economies of scale and improving access of "smaller" regulators to research and evidence (and thereby taking practical steps towards developing a shared services model)

Establishing new frontline regulators consumer information/public legal education (PLE) forum to develop a range of products beyond Legal Choices, building on the Solicitor General's PLE strategy and involving expert voices across the sector

Explore the potential benefits and feasibility of a Single Digital Register – covering unregulated providers as well as the regulated as suggested by CMA and Mayson

A range of suggestion in relation to technology including the development of an annual or twice-yearly summary of developments in the use of tech in professional sectors, taking forward in the



longer term a regulatory response unit (to provide practical advice on the handling of new tech to both regulators and providers)

A range of suggestions in relation to diversity and inclusion, including the establishment of principles for the role that regulation can play in promoting diversity (for example in how disciplinary processes and sanctions are used to send a clear message about working practices, cultures and behaviours that undermine diversity and inclusion).

A range of suggestions in relation to shared services (with encouragement to focus first on areas that are perhaps more easily reached such as the research commissioning and procurement example mentioned above)

Provision of a shared secretariat to co-ordinate the delivery of CMA recommendations (or indeed cross-sector strategic issues more widely)

I would be very grateful for any thoughts you and your teams might have either on this list, or areas we have not covered, and also for expressions of interest in helping take them forward, whether in a leading role or as a participant.

I wonder whether I might also suggest that in the interests of iterating a discussion between us all, that we might commit to copying to the group any individual responses, and to a timetable that will enable me to write again summarising the position before the end of April.

I am sending a copy of this letter to our respective Chief Executives.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Helen Phillips', with a fluid, cursive style.

Dr Helen Phillips  
**Chair**  
**Legal Services Board**

Yours sincerely

**Minutes of the ACL Council Meeting**  
**held on 3 December 2020**  
 by Conference Call



**Council members present:** Claire Green, Chairman (CG), Francis Kendall, Vice Chairman (FK), Stephen Averill (SA), David Cooper (DC), Kris Kilsby (KK), Jack Ridgway (JR), Adam Grant (AG), Natalie Swales (NS), Rachel Wallace (RW)

**Also present:** Diane Pattenden (DP), Head of Operations

The meeting started at 11am

Item	
1	Welcome and apologies
	CG welcomed all to the meeting.
2	Minutes of the council meeting held on 4 November 2020
	The minutes of the council meeting held on 4 November were agreed for publication as being an accurate representation of the meeting.
3	Actions arising from the council meeting held on 4 November 2020
	The actions arising were discussed and updated.
4	ACLT projections
4.1	CG asked council members for their views on the projections for ACLT, circulated ahead of the meeting. All members gave their views and a full discussion took place.
4.2	JR said that for him, the key question was "If the projections indicate that the course will make a loss is council willing to run it?" and asked council if they were prepared to ring fence the necessary funds that may be required to enable the 2021 intake to complete the course.
4.3	CG invited council members to vote on JR's question. FK and AG abstained. All other council members voted in favour of running the course and ring fencing funds. It was agreed that NS would inform KA that council had made the decision to go ahead with the 2021 intake and would ask KA to produce a viability report by 17 December. The report should include a series of options for council to consider together with recommendations for the future viability of ACLT. NS agreed to draft a communication to KA for council to approve.
5	Marketing the Profession
	Prior to the meeting a draft consultation paper on marketing the profession was circulated to members. RW said that many of the ideas could be immediately progressed. It was agreed that council members would email RW with their views on whether each of the 5 avenues to be explored should be progressed.
6	Remaining agenda items
	It was agreed that the remaining agenda items would be carried over to the next council meeting.
7	Date of next council meeting
	The next council meeting will be held by conference call at a time and date to be agreed.
	There being no further business the meeting ended at 1pm.

**Minutes of the ACL Council Meeting**  
**held on 5 February 2021**  
 by Conference Call



**Council members present:** Claire Green, Chairman (CG), Francis Kendall, Vice Chairman (FK), Stephen Averill (SA), David Cooper (DC), Kris Kilsby (KK), Jack Ridgway (JR), Adam Grant (AG), Natalie Swales (NS), Rachel Wallace (RW)

**Also present:** Diane Pattenden (DP), Head of Operations

The meeting started at 1.30 pm

Item	
1	<b>Welcome and apologies</b>
	CG welcomed all to the meeting. There were no apologies for absence.
2	<b>Minutes of the council meeting held on 3 December 2020</b>
	The minutes of the council meeting held on 3 December were agreed for publication. It was acknowledged that due to the confidential nature of much of the meeting, the minutes were brief.
3	<b>Actions arising from the council meeting held on 3 December 2020</b>
3.1	The actions arising were discussed and updated.
3.2	Item 1 – DC pointed out that the ACL website included a note of the main court fees but questioned whether other fees relevant to costs lawyers should be included. RW suggested that historic court fees could be uploaded to the website. DC suggested uploading pdf copies of the information pages from old ACL diaries. A discussion followed on the relevance of providing this information and it was agreed that DP would look into the costs. RW can provide high quality PDFs if necessary.
3.3	Item 4 – DP will provide JR with copies of the professional indemnity policies provided.
3.4	Point 7 – KK to follow up with the Law Society
4	<b>ACL/ ACL end of year figures</b>
4.1	CG sought clarification on some of the figures and a general discussion followed regarding the draft accounts for 2020. DP will speak with the bookkeeper and ask for a footnote to be added to show when the 2020 forecast was revised.
4.2	A discussion followed regarding the fees for editing and publishing the Costs Lawyer. FK/CG to discuss fees in general with NR/KJ. DP will seek alternative quotes for publishing the journal (to include costs for printing a hard copy).
5	<b>Education report</b>
5.1	NS reported that the Education Executive is considering a date in April to hold student exams on the basis that the Government is currently allowing professional exams to be held. KA is looking at exam venues to see if suitable options are available. The committee have also looked further into the option of holding online exams but NS stressed that this would be a very expensive option.

5.2	CG reported on a conference call with KW in January at which the audit framework document was discussed. FK suggested that the working party move forward with their work on a viability report in which they should address the cost of running ACLT based on current student numbers and the vulnerability of ACLT when only one individual has full knowledge of the management and day to day running of the company. Following a full discussion regarding ACLT, CG asked JR/SA/KK to, as a matter of priority, continue their work on looking at the future of education and producing a viability report.
6	Options for attracting non-qualified costs professionals
6.1	A report by DC was circulated immediately prior to the council meeting and he gave council members a verbal synopsis of the report. He stated that there is potentially a lot of benefit but highlighted that the current Bye Laws would need to be amended. CG asked council members to review the document in preparation for a full discussion and vote on proposals at the next council meeting.
6.2	CG referred to the recent acquisition of A&M Bacon/PIC. A discussion followed and RW suggested asking Frenkel Topping to write an article for the Costs Lawyer.
7	Policy report
7.1	AG referred to a recent policy committee meeting and said that they were working through their action plan. AG will circulate a copy of the minutes to council members once approved. AG reported that the committee was also preparing a continuity plan for ACL.
7.2	AG has been contacted recently by the LSB to discuss changes to how they consider regulatory arrangement change applications. He has a meeting with the LSB in the next few weeks and will update council members following this.
7.3	AG confirmed that the LSB has published their annual regulatory performance assessment report which has been circulated to council members.
7.4	A key issue for the policy committee to address is the guideline hourly rates reports that have been prepared by the CJC working group. AG confirmed that he had sent a brief summary paper to council members and that the consultation was open to 31 March. He went on to say that he felt that members should be encouraged to respond but that they would also expect council to respond. All agreed. GC said that historically members have been emailed to ask if they would like to volunteer to be part of a working party. RW suggested sending a questionnaire to members to get feedback to gather information and at the same time ask for volunteers. DC abstained from the discussion due to his involvement with the CJC committee. It was agreed that KK would devise a questionnaire and send it to RW and AG for their input. AG agreed to chair the working party and will arrange for the questionnaire to be sent to the membership as soon as possible.
7.5	RW said she believed that some other professional bodies did not have the separation from their regulators that costs lawyers do regarding the collection of fees. AG said this has been raised a number of times over the years and that it is clear in the operational protocol and MoU that the two bodies are separate the rules of which are specified within the internal governance rules. Following discussion, AG said he would raise the issue with the LSB at his next meeting with them.
8	2021 Conferences/Operations report
8.1	DP reported that 481 costs lawyers had renewed their membership for 2021 and gave a breakdown of the main reasons for this. She confirmed that 82% of costs lawyers who hold a practising certificate are members. CG asked for a list of those members who had not renewed.
8.2	It was agreed that ACL would hold two online conferences in 2021 – one at the end of April

	and the other in November. CG said that she would like 2 costs lawyers to speak at each event and it was agreed that the format and timings should be the same as the November 2020 event.
9	PR
9.1	As agreed earlier in the meeting, FK confirmed that he and CG would meet with Black Letter
9.2	CG said she would like to hold online regional meetings in 2021. A discussion about whether meetings needed to be arranged by region took place and it was agreed that they did not. It was agreed to run a number of online meetings for a maximum of 10 attendees at a time. 'Go to Meeting' will be used and each meeting will be hosted by a council member. FK suggested inviting a speaker to the meeting to talk for the first 30 minutes. DP will provide a schedule for the meetings and allocate a council member to each meeting.
9.3	Discussion regarding the forum and its use took place. RW said she believed that many members did not use the forum due to problems with logging on or because they needed reminding of its existence. RW asked other council members to try to log on to see if they experienced issues. RW suggested that members could be regularly signposted to the Forum from the e-bulletin and encouraged to discuss a weekly topic via the forum. She also suggested allowing members to be anonymous in order to encourage engagement. DP will look at the functionality of the Forum to see if posting anonymously is possible. Further discussion took place regarding whether use of the forum has been overtaken by social media. RW pointed out that the value of using the Forum is that content is restricted to members. There was a general feeling that logging on to the Forum was cumbersome and could be streamlined. DP clarified that the Forum was an 'add on' to the website and a separate system that was accessed via the website.
10	Any other business
	FK referred to an approach by email in December regarding pro bono work which DP had circulated to council. DP will forward it to CG for reply.
11	Date of next council meeting
	The next council meeting will be held by conference call on Thursday 11 March at 11am.
	There being no further business the meeting ended at 4.20pm