



## Costs Lawyer Standards Board

### AGENDA

**Monday 21 October 2024 @ 10:30am**  
**Remotely via videocall**

<b>Board:</b>	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
	Paul McCarthy	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	CEO
	Jacqui Connelly	Director of Operations
	Lori Frecker	Director of Policy
	Tom Hayhoe	Legal Services Consumer Panel (item 1)
	Lola Bello	Legal Services Consumer Panel (item 1)
	David Bailey-Vella	Association of Costs Lawyers (item 9.1)

*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> 1.3 Meet and greet session with Tom Hayhoe	- - -		DH DH DH
2	<b>Minutes</b> 2.1 <a href="#">Approval of minutes</a> (17 July 2024) 2.2 <a href="#">Matters arising</a> (17 July 2024)	Item 2.1 -	Yes	DH DH
3	<b>Strategy</b> 3.1 <a href="#">Progress against Business Plan: Q3 2024</a> 3.2 Communications strategy	Item 3.1 Item 3.2	Yes No (B)	KW 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.

4	<b>Board matters</b> 4.1 Interim update from Remuneration Committee	-		AH
5	<b>Finance</b> 5.1 <a href="#">Quarterly report: Q3 2024</a> 5.2 Practising fee application outcome	Item 5.1 Item 5.2	No (D, E) Yes	JC KW
6	<b>Risk management</b> 6.1 <a href="#">Review of risk register</a>	Item 6.1	Yes	DH
7	<b>Regulatory matters</b> 7.1 Education and training updates 7.2 Guidance Note for unregulated firms 7.3 Costs Lawyers, technology and regulation project report 7.4 EDI resources bundle 7.5 Topic note: Presenting information to the court 7.6 Feedback from Wales roundtable 7.7 Next two year review of the DR&P	- Item 7.2 Item 7.3A+B Item 7.4A-D Item 7.5 - Item 7.7	 Yes Yes Yes Yes  Yes	KW KW LF KW KW DH/LF KW
8	<b>Legal Services Board (LSB)</b> 8.1 <a href="#">Work updates</a> 8.2 Regulatory performance assessment info request	Item 8.1 Item 8.2	Yes Yes	KW KW
9	<b>Stakeholder updates<sup>2</sup></b> 9.1 Discussion with ACL: New membership categories 9.2 <a href="#">ACL Council meeting minutes</a> 9.3 Feedback from ACL London conference 9.4 <a href="#">Work updates</a>	- Item 9.2 - -	 Yes  	DH KW JC/LF KW
10	<b>Operations</b> 10.1 Outcome of 2024 audit of complaints procedures 10.2 Documenting internal processes 10.3 Data protection review	Item 10.1 Item 10.2A+B -	Yes Yes	JC KW/JC KW
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: 12 December 2024</a> <a href="#">Venue: Remotely via Teams</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.

Company number: 04608905

**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 17 July 2024 at 9:30 am**  
**20 Tavistock Square, London**

<b>Board:</b>	Rt Hon David Heath CBE	Lay NED (Chair)
	Stephanie McIntosh	Lay NED (Vice-Chair)
	Andrew Harvey	Lay NED
	Andrew McAulay	Non-Lay NED
	Paul McCarthy	Non-Lay NED
<b>In attendance:</b>	Kate Wellington	CEO
	Jacqui Connelly	Director of Operations

**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.

**2. MINUTES**

**2.1 Minutes dated 23 April 2024**

The board considered the minutes of its last scheduled quarterly meeting on 23 April 2024. The board agreed the minutes as being a true record for signing.

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

**2.2 Matters arising**

The board considered the matters arising from the minutes of its meeting on 23 April 2024. 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: Q2 2024**

The board was provided with a progress update against the 2024 Business Plan for Q2. Four of the 16 Business Plan priorities had been delivered, with another ten in train and two scheduled to commence in H2.

The board discussed workstreams relating to qualification, including the first audit of the CLPQ and the new process for handling Qualifying Experience (QE) applications. Board members asked about trends in QE applications so far, including the quantity being processed and the quality of submissions. The board discussed ways of helping

students engage with the CLSB's guidance on QE early on in their journey and then building periodic reminders into interactions with students.

The board considered and approved the executive's proposed strategic priorities for Q3 of 2024.

### **3.2 Feedback from strategy day (16 July 2024)**

The board held a strategy day on 16 July and used this agenda item to provide feedback on the format and content of the sessions. Board members felt that the session on development of the CLSB's communications strategy, led by consultancy Consumer Voice, had been very constructive and brought fresh perspectives.

One of the matters arising from the board's meeting in April was to finalise risk appetite statements for the communications strategy. There had not been time to do this at the strategy day, so the board considered the risk appetite statements under this agenda items. The board agreed with the weightings Kate had assigned to each risk based on the board's feedback in April, except that risk 5 (relationship risks) should be moved from a rating of 1 (no appetite) to a rating of 2 (appetite where this is needed to mitigate a core risk).

**Action: Finalise communications risk appetite statements as agreed.**

### **3.3 2025 Business Plan**

Kate presented the proposed 2025 Business Plan for consideration and approval, explaining how the priorities were linked to the regulatory objectives and the CLSB's mid-term strategy. The board discussed resourcing for the various projects, considering in particular which items could be outsourced to relieve pressure on internal time. The board agreed that the CLSB's model of using consultants to do project work with curation and oversight by the executive continued to be effective and should be applied to the new Business Plan. The board approved the Business Plan for consultation alongside the practising fee (see agenda item 5.3).

The board also felt that succession planning should be considered carefully in the Business Plan context, given the volume of planned work. David asked the Remuneration Committee to consider this in the first instance and report back to the board.

**Action: Remuneration Committee to consider executive succession planning and report back to the board in December or March.**

## **4. BOARD MATTERS**

### **4.1 2025 board dates**

The board agreed to schedule its next four quarterly meetings on the following dates:

- Q4 2024 meeting: 12 December 2024 (remote)
- Q1 2025 meeting: 26 March 2025 (remote)
- Q2 2025 meeting: 18 June 2025, with a strategy day on 17 June (in person)
- Q3 2025: 17 September 2025 (remote)

**Action: Publish board meeting dates on website.**

## **5. FINANCE**

### **5.1 Quarterly report: Q2 2024**

Jacqui introduced the quarterly finance report. The board noted the financial position at the end of Q2, namely a nominal projected surplus for the year, and Jacqui explained the reasons for variations from budget for certain line items. She also flagged the increasing income from interest on reserves, given prevailing high interest rates. The board noted the financial position.

### **5.2 2023 accounts**

The board was presented with the 2023 financial accounts for approval, as prepared by AGP accountants. The board unanimously approved the accounts for signing.

**Action: Chair to sign 2023 accounts; AGP to file accounts with Companies House; Publish accounts on website.**

### **5.3 2025 budget and PCF consultation**

Kate introduced this item, explaining how the proposed budget and consultation had been developed. She explained how the budget surplus from 2022 of circa £24k, which had been deployed to offset expenditure and reduce the practising fee in 2024, was not available for 2025. Therefore, while planned expenditure would be static, the practising fee would inevitably rise. The proposed increase would be from £290 in 2024 to £305 in 2025. This represented an increase of 5%, following an increase of 3% last year and no increase the year before.

The board discussed the proposed practising fee, as informed by the proposed budget. The board noted that it had known when setting the fee for 2024 that application of the surplus in that year would result in an increase to the fee in 2025; that outcome was appropriate and expected.

The board considered resourcing in the context of the budget, and agreed that the CLSB's financial stability and internal workload meant the Director of Policy should be offered a permanent role going forward.

The board also discussed the level of its financial reserves and current account buffer, and in particular whether it was the right time to make investments in discrete improvement projects from committed reserves. The board agreed that these funds should be invested carefully and only where value for the regulated community, the public and/or the regulatory objectives could be demonstrated, aligned to the CLSB's strategy. Several project options were considered and Kate agreed to give this further thought during the year.

The board considered the practising fee consultation documents and the consultation questions posed. The board approved the consultation, including the budget, for publication.

**Action: Publish practising fee consultation with annexes; Transition Director of Policy role; Consider project options for investment of reserves.**

## **6. RISK MANAGEMENT**

### **6.1 Review of risk register**

The board carried out its quarterly review of the risk register and discussed whether any amendments were required. In doing so, board members focused on issues around (i) market consolidation and (ii) use of AI.

The discussion around the risks and opportunities from increasing use of AI followed a session at the strategy day looking at future developments in the profession. The risks considered by the board included:

- potential professional negligence and the impact on insurance;
- poor client outcomes through misleading advice;
- reduction in learning opportunities for junior Costs Lawyers as AI replaces entry-level tasks; and
- sustainability risks for the profession as a whole.

In relation to market consolidation the board discussed recent acquisitions by costs firms such as Frenkel Topping and was provided with statistics about the number of Costs Lawyers working within the largest employers of regulated practitioners. Board members considered the structure of the market in terms of referrals and integrated services, and the need to ensure clients understand whether/when a firm is preferring its own or related party services over a competitive tender process so they can make informed choices about which organisation to instruct for different service needs. The risks canvassed included:

- conflicts of interest that could undermine the regulatory objectives relating to market competition and consumer interest; and
- increasing concentration of employment which could undermine the regulatory objective relating to promoting a strong, diverse and effective profession.

***Actions: Update risk register in relation to AI and maintain a watching brief on market consolidations.***

## **7. REGULATORY MATTERS**

### **7.1 Ethics Hub**

The board was updated on the launch of the new Ethics Hub ([clsb.info/ethics-hub/](https://clsb.info/ethics-hub/)) in Q2. Kate explained the structure of the Hub, which comprised a landing page from which users could explore nine ethical scenarios and seven resource pages on dedicated topics, and the board was shown examples of content. Kate also confirmed that resources had been tested with the CLSB's Non-Lay NEDs and Advisory Panel prior to publication where appropriate.

The board explored ideas for potential future content in the Hub and well as ways of communicating about the resources available. Kate set out the communications programme actioned to date, as well as plans to base the CLSB's session at the ACL conference in October around ethics and the rule of law. The board discussed the value of gathering statistics on traffic to the microsite, including after the conference by way of comparison. Board members discussed the different audiences for the site and how they could best be reached.

***Action: Investigate traffic monitoring for the Ethics Hub.***

## 7.2 New Guidance Notes

The board was asked to consider and approve four new Guidance Notes for publication in the Costs Lawyers Handbook. Kate explained the purpose of each note as follows.

- Guidance Note on Undertakings: This note captured learnings from a recent disciplinary investigation involving a Costs Lawyer failing to honour an undertaking given to a former solicitor.
- Guidance Note on Economic Crime: This note updated the CLSB's guidance on AML to cover other types of economic crime. It was needed to comply with the LSB's expectations on promoting the new economic crime regulatory objective.
- Guidance Note on Setting up a Practice: This note delivered the first part of Business Plan priority 10, following on from the CLSB's entity regulation work.
- Guidance Note on Client Confidentiality and Acting with Integrity: This note captured learnings from a recent disciplinary investigation involving a Costs Lawyer placing their client's interests before their duty to the proper administration of justice. It also supported various provisions in the new Code of Conduct.

The board felt each of the notes was both helpful and clear. Board members discussed a potential lack of understanding around the importance of undertakings, particularly in the context of file transfers, and felt it would be particularly important to communicate this new Guidance Note widely.

In relation to client confidentiality and conflicts, risks were discussed regarding Costs Lawyers acting for different solicitors who have both worked on the same substantive proceedings but who have competing interests inter se in how recovered costs are distributed between them. It was agreed that this could provide a helpful ethical scenario for the Ethics Hub going forward.

The board approved the new Guidance Notes for publication.

***Action: Publish new Guidance Notes; Work up new ethical scenario for the Ethics Hub based on discussion of conflicts.***

## 7.3 Complaints about unregulated providers

The board was provided with a report in relation to Business Plan priority 2, setting out anecdotal evidence of poor consumer outcomes in the unregulated part of the costs market. It was noted that, while the number of complaints received by the CLSB about unregulated providers was high as a proportion of overall complaints (around the same proportion as for regulated Costs Lawyers), the number of examples in absolute terms remained relatively small. The board was therefore asked for feedback on how to best use the evidence collated to date.

The board discussed whether the evidence was sufficient to take proactive steps to highlight poor consumer outcomes and considered options including publishing anonymised case studies, sharing information with ACL and/or using the evidence

reactively (for example, in response to consultations) while continuing to build the evidence base.

Board members agreed that publication would need to be aligned to the communications strategy, which was still in development, and the purpose of publication would need to be clear. The board agreed that proactive publication was not appropriate at this stage, but that the CLSB should continue to collate data of the kind set out in the report for use once more evidence was available. Where possible, sufficient information should be sought from complainants to build meaningful case studies.

The board discussed the unsatisfactory position of not being able to help complainants find a resolution when they experienced a poor outcome in the unregulated part of the market and the damage this caused to the reputation of CLSB, Costs Lawyers and the legal sector generally. Options for providing assistance and advice were discussed, and it was agreed that for complaints where no signposting was available at all, complainants should be encouraged to write to their local MP about their experience under the existing regulatory framework to help build the case for change.

**Action: Continue to build evidence base over time.**

#### **7.4 Engagement in Wales**

The board was updated on work the CLSB is doing to better understand costs services in Wales. The board was provided with details of a planned roundtable event in the Autumn where specific issues of interest would be discussed. Kate explained that a draft invitation was with the Welsh Government for approval and would be sent out shortly. Andrew M and Paul noted they both had clients in Wales and would be keen to attend the event, and David noted he would be able to attend in person if needed.

**Action: Get in touch with Andrew, Paul and David at the point of setting a date for the roundtable.**

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

#### **8.1 Work updates**

The board received updates from David and Kate in relation to:

- the new LSB CEO, who would take up post in August;
- input into the LSB's project on disciplinary and enforcement processes;
- attendance at the LSB's economic crime roundtable;
- research into Costs Lawyers and technology for compliance with the LSB's new policy statement in that area;
- a letter received from the LSB requesting evidence of compliance with the LSB's policy statement on consumer empowerment in September;
- attendance at the latest roundtable meeting on professional ethics and the rule of law (PERL).

#### **8.2 Compliance plan for transparency expectations**

The board was provided with a letter from the LSB setting out the timetable for the next regulatory performance assessment along with the LSB's expectations in relation to transparency in that context. The board was also provided with a gap analysis



comparing the CLSB's current governance practices to the expectations in the LSB's letter. The executive recommended changes to processes in three areas to ensure compliance with the expectations.

The board considered and approved the first and third recommendations, noting that the third was in line with (for example) the typical approach to local government planning.

The board discussed the second recommendation in detail, which related to publication of minutes of Remuneration Committee (Rem Com) meetings. The board was mindful that the Rem Com often considered matters involving personal data and/or confidential personnel matters, particularly given the small size of the organisation and thus identifiability of staff. Board members agreed that fulfilling legal and regulatory obligations to staff (and prospective staff) was of the utmost importance when considering whether to publish Rem Com minutes.

However the board was also confident that standing items of the Committee, such as the annual cost of living wage rise that applies to all personnel including directors and panel members, rarely involved confidential matters. And, in any event, the Rem Com's decisions were documented in the minutes of the board meeting at which the Rem Com reported back to the full board.

The board was also comfortable that any redactions from Rem Com minutes that were necessary to comply with legal obligations could be made within the parameters of the CLSB's existing publication policy, ensuring that readers were provided with the reason for redaction in each case. The second recommendation was therefore also agreed.

***Action: Implement recommendations from the gap analysis.***

## **9 STAKEHOLDER UPDATES**

### **9.1 ACL Council meeting minutes**

The board noted the minutes of the ACL Council meeting held in March. The board was also provided with draft minutes of the Council's April and June meetings, but as these had not yet been approved by the Council, Kate noted they would not be published with the board papers.

### **9.2 Work updates**

The board received updates in relation to:

- an introductory meeting with the new Chair of the Legal Services Consumer Panel;
- collaborative talks with Women in Costs;
- ACL's recent consultation on changes to its Articles and bye-laws.

The board discussed ACL's consultation in detail, particularly in relation to the new membership categories of Fellow and Costs Draftsperson that ACL was proposing to create. The board was keen to understand the response rate to the consultation to ensure a sufficient proportion of the profession was on board with the proposals, as well as detailed consultation with ACL Training and the SCCO. Board members raised

concerns around the Costs Draftsperson membership category being linked to the criterion of “supervision by a Costs Lawyer” and queried the impact of this from a regulatory perspective, including regulatory responsibility for client outcomes caused by the supervised Costs Draftsperson.

The board agreed to invite the Chair of ACL to the October board meeting to discuss the changes, even if a decision had already been made at an ACL EGM. While the board was mindful that the changes were ultimately a decision for ACL alone, it asked the executive to encourage ACL to ensure it had sufficient time before the EGM to think through all the potential consequences in detail.

Kate agreed to write to the Chair of ACL with an invitation to the October meeting and the board’s feedback on the proposals.

**Action: Write to the Chair of ACL as agreed.**

### **9.3 Annual review of MOU and OP**

The board was informed that the fourth annual review of the MOU and Operating Protocol (OP) between ACL and the CLSB had taken place in Q2. The organisations had received all the information they needed under the OP in 2023 and there had been no perceived threats to regulatory independence identified during the year. It was agreed that the protocol was working well and that no changes to the documents were necessary at this stage.

The board noted the outcome and Kate confirmed that the versions of the MOU and OP published on the CLSB website would be annotated to show the date of last review.

**Action: Publish annotated version of MOU and OP on website.**

## **10 OPERATIONS**

### **10.1 Client care letters project plan**

The board received an update on the project plan to deliver priority 12 in the Business Plan, relating to investigating whether a new supervision framework for client care letters was warranted based on evidence of client outcomes. Kate and Jacqui explained that, during the planning stage, it had become clear that an audit-style approach was unlikely to be possible given the wide variety of equally valid approaches to client care letters used in the market.

The executive therefore intended to carry out a thematic review of sample client care letters with a view to identifying poor practice, which could be used as the basis for improving standards. Depending on the outcome of the review, tools could be developed such as model client care letters for sole practitioners or small firms, updated guidance, top tips / dos and don’ts, training videos and so on.

The board discussed the quantity and quality of the sample client care letters that had been collected to date, including practitioners’ responses to requests from the CLSB for assistance with the project. The board agreed that a sample of around 15 letters was sufficient and agreed that the proposed thematic review was a sensible approach. Board members discussed potential outputs from the project, including direct feedback to those Costs Lawyers who had provided sample client care letters. It was

agreed that the tone of individualised feedback should be in line with the CLSB's approach of providing valuable advice and support toward continual improvement for the benefit of clients.

**Action: Proceed with the project based around a thematic review.**

## **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**

There was no other business.

## **13 NEXT SCHEDULED QUARTERLY MEETING**

The next meeting was scheduled for 23 October and would be held remotely via videocall.

There being no further business, the Chair declared the meeting closed at 12:07.

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Chair

### **Related documents**

<b>Item</b>	<b>Document</b>	<b>Publication location (CLSB website)</b>
2.1	Board minutes	About ⇒ Our board
3.1	2024 Business Plan	About ⇒ Strategy and governance
3.3	Proposed 2025 Business Plan	Regulatory ⇒ Consultations
5.2	Annual accounts	Regulatory ⇒ Cost of regulation
5.3	Proposed 2025 budget and practising fee consultation	Regulatory ⇒ Consultations
6.1	Risk register	About ⇒ Strategy and governance
7.1	Ethics Hub	For Costs Lawyers ⇒ Costs Lawyer Handbook
7.2	Guidance Notes	For Costs Lawyers ⇒ Costs Lawyer Handbook
9.3	MOU and OP with ACL	About ⇒ Who we are
11.1	Board papers	About ⇒ Our board

# Q3 board update

## Costs Lawyer Standards Board



# Annual priorities

## Improving our regulatory arrangements

	Initiative	Progress status / expected completion
1.	<p>In collaboration with ACL Training, oversee the first year of delivery of the new Costs Lawyer Qualification, including by:</p> <ul style="list-style-type: none"> <li>• carrying out the first annual monitoring process under the Accredited Study Provider Scheme Handbook;</li> <li>• developing additional guidance and materials on the regulatory aspects of qualifying, based on student feedback;</li> <li>• communicating the responsibilities and benefits of regulation to new student cohorts.</li> </ul>	<p><b>In train (expected Q4)</b></p> <p><i>Achieved: We have now processed several Qualifying Experience applications and responded to enquiries about students' individual circumstances. This has allowed us to augment our guidance around the transitional arrangements and FAQs, and update the form fields.</i></p> <p><i>The CLSB has been integrated into the induction process for students, through a presentation on the mechanics and purpose of regulation. Jacqui delivered our first presentation on ethics and the new Code of Conduct as part of the professional ethics module in Q2.</i></p> <p><i>The annual monitoring process began in Q3 with information being requested from ACL Training. The Accreditation Panel has been convened and will complete the process in November.</i></p> <p><i>Outstanding: Complete the first annual monitoring event once data is received from ACL Training at the end of October.</i></p>
2.	<p>Deliver a project to capture anecdotal evidence of poor consumer outcomes in the unregulated part of the costs market and report to stakeholders on themes and trends. Explore avenues that are available under the existing legislative framework to tackle poor practice and promote the regulatory objectives outside the immediate scope of regulation.</p>	<p><b>Achieved (Q2)</b></p> <p><i>Achieved: We carried out a review of our enquiries logs and case studies to consider whether we had sufficient evidence for publication, and liaised with ACL to share information. A report was presented to the board in July, allowing the board to consider whether there is sufficient evidence for publication. The board agreed that proactive publication was not appropriate at this stage, but that we would continue to collate data of the kind set out in the report for use once more evidence was available. See July board minutes for more information.</i></p>
3.	<p>Develop and begin to implement a comprehensive, long-term communications strategy, aimed at supporting each of the five strategic goals in our new mid-term</p>	<p><b>Achieved (Q3)</b></p> <p><i>We kicked off this workstream at the January board meeting, with the board articulating the purpose and scope of the project. In April, the board considered a series of appetite statements relating to communication</i></p>

	organisational strategy in a cohesive and systematic way.	<i>risks, and final versions of the statements were approved in July. We engaged a consultancy in Q2 to assist with the project and they led a session at the July strategy day to agree key messages. Working with the consultancy, and based on the key messages agreed by the board in July, we have developed a final strategy document for consideration and approval by the board at this meeting.</i>
4.	Embed the B2C regulatory framework with the group of Costs Lawyers that deliver services directly to consumers.	<p><b>Achieved (Q3)</b></p> <p><i>We analysed the data about Costs Lawyers' clients captured during the 2024 PC renewal round to give us an understanding of which practitioners to target through this workstream. We improved the accessibility of our guidance during Q2 to turn it into web content in time for 2025 PC renewals. We then sent individual communications to the Costs Lawyers involved, highlighting their obligations and inviting a dialogue. We have put evaluation measures in place for use going forward, using proxies where it will be difficult to engage directly with end consumers.</i></p> <p><i>In Q2 we received a letter from the LSB to all approved regulators outlining expectations for compliance with the policy statement on consumer empowerment. We reviewed these expectations against our workplan in Q3 and responded to the LSB's information request by the end of September.</i></p>
5.	Publish the second annual Risk Outlook for the profession and assess the impact and future direction of this initiative.	<p><b>Achieved (Q1)</b></p> <p><i>We commissioned the research underlying the next annual Risk Outlook in Q1. That research was analysed to produce a publishable version, which was approved by the board in April. The Risk Outlook was published and promoted following approval and is now housed in the Ethics Hub.</i></p>
6.	Implement changes to the Costs Lawyer Code of Conduct, including by reviewing all published regulatory arrangements, guidance, policies and web content to ensure alignment with the new Code.	<p><b>Achieved (Q1)</b></p> <p><i>The new Code of Conduct was implemented in Q1, following liaison with the LSB. All published guidance, policy statements and regulatory arrangements were reviewed, and updated versions have been published that correctly cross-refer to the new version of the Code. References to the Code in the Disciplinary Rules and Procedures – which form part of our regulatory arrangements – have been amended by exemption in line with the LSB's ED181. That completes this priority.</i></p>

		<i>Additional support resources for the Code were developed in Q2 and published in a new Ethics Hub. Work will continue throughout the year on developing additional material for the Hub.</i>
7.	Carry out the next two-year review of changes to the Disciplinary Rules and Procedures, looking at second tier complaints handled during the review period as well as any good practice examples or learnings from our or other regulators' work.	<b>Achieved (Q3)</b> <i>We carried out this review in Q2 and a report of the findings and recommendations will be put to the board at this meeting.</i>
8.	Carry out the first phase of evaluation activities relating to the new framework for qualifying as a Costs Lawyer.	<b>Pending (expected Q4)</b> <i>This priority is scheduled for H2, following completion of the current cohort's first year and the first annual monitoring event.</i>
9.	Align our work on ongoing competency – including the expanded Competency Statement – with our existing framework for continuing professional development (CPD) and develop additional resources for practitioners where appropriate.	<b>Achieved (Q1)</b> <i>The new Ongoing Competency Framework was launched in Q1, in line with our commitments to the LSB. Our CPD resources, including our forms and guidance, have been updated to integrate the new Framework. We have liaised with ACL and ACL Training to identify and create training opportunities aligned to developing the skills in the Framework and this engagement will continue on an ongoing basis.</i>
10.	Develop new guidance to address risks identified in the following areas: <ul style="list-style-type: none"> <li>• setting up a new practice; and</li> <li>• expectations on (unregulated) costs firms.</li> </ul>	<b>Achieved (Q3)</b> <i>We developed guidance for setting up a new practice, which was considered and approved by the board in July. Instead of developing new guidance for costs firms, we decided to repurpose our existing guidance for unregulated employers. The updated guidance will be put to the board at this meeting.</i>
11.	Develop the next phase of our diversity and inclusion workplan by reference to the new mid-term strategy.	<b>Achieved (Q3)</b> <i>We analysed the results of our 2023 diversity survey and a report on the data was published in Q2. Our follow-up work from the gender pay gap survey was completed in Q3 with the production of resources to help Costs Lawyers approach their employers about pay gap issues, which will be put to the board at this meeting for approval as</i>



		<p><i>part of a bundle of EDI resources (including guidance on bullying and harassment and updated EDI guidance).</i></p> <p><i>We have identified our EDI priorities for 2025, which will focus on gathering and publishing lived experience data, and we have developed a diversity survey for 2024 that will provide initial quantitative data to support that project. The survey will be launched alongside practising certificate renewals.</i></p>
12.	Investigate whether a new supervision framework for client care letters is warranted based on evidence of client outcomes.	<p><b>In train (expected Q4)</b></p> <p><i>Achieved: A project plan was developed and requests for sample client care letters were sent to firms in Q2. A progress report and proposed next steps were presented to the board in July. Based on the board's feedback, we have engaged a consultant to carry out a thematic review of client care letters.</i></p> <p><i>Outstanding: A report of the project findings will be put to the board in December, including recommendations as to how we approach client care letters going forward.</i></p>
13.	Modernise the way we track enquiries from external sources to facilitate reporting and trend analysis.	<p><b>Achieved (Q1)</b></p> <p><i>A new process was implemented in Q1 allowing us to check previous advice to ensure consistency across different practitioners, spot trends and report on particular issues. The tracker has been used in developing materials for the new ethics hub and to provide real-world (anonymised) examples in presentations to students. It has also been supplemented by an additional project to better track our communications with/requests to Costs Lawyers and their areas of regulatory interest.</i></p>
14.	Systematically document all key internal processes and workflows to promote business continuity as well as compliance with internal policies and external regulatory and legal requirements.	<p><b>Achieved (Q3)</b></p> <p><i>During 2024 we have developed a new Operations Manual to document key processes and capture institutional knowledge. This is a comprehensive account of how we work, which will continue to be a "living" document as processes evolve over time. We have also developed flowcharts to map the different user journeys through our online application forms.</i></p>
15.	Review our data protection arrangements to ensure they remain robust and fit for purpose following	<p><b>Achieved (Q3)</b></p> <p><i>We scoped this project in Q2 and determined that we had sufficient expertise and information to complete it in-house. Work on reviewing and updating our contract</i></p>



	extensive improvements to our digital operations.	<i>records, privacy policy, Data Protection Manual and other privacy resources was completed in Q3. A summary of this work will be provided to the board at this meeting.</i>
16.	<p>Deliver the next phase of our digital workplan by:</p> <ul style="list-style-type: none"> <li>Continuing to develop our suite of application forms and their interface with the CLSB database, in line with our principles of ease of use, security of data, utility of reports, consistency of approach. In particular: <ul style="list-style-type: none"> <li>standardise the wording, content and layout of forms;</li> <li>begin work on standardising the underlying code to facilitate easier updates;</li> <li>introduce functionality to automate annual updates.</li> </ul> </li> <li>Developing the CLSB database by: <ul style="list-style-type: none"> <li>enhancing security to provide unique access keys for each user;</li> <li>reviewing the read-only version of the database to improve ease of use and utility.</li> </ul> </li> </ul>	<p><b>Achieved (Q3)</b></p> <p><i>We continued the updates to our suite of online application forms to standardise the wording, content and layout of forms. This was completed in Q3 with the updating of the PC renewal form ready for the annual renewals process in November.</i></p> <p><i>In Q2 our IT consultant completed updates to the underlying code of the online forms system to allow easier annual updates. This will save considerable development and admin testing time. New database functionality provides similar automated annual updates as well as improved database portability for periods of holiday cover. Each user of the database now has a unique access key to improve security.</i></p> <p><i>In Q2 we also undertook a review of the read-only version of the database (used by the CEO and Director of Policy). The review concluded that this was working well in its current form, and it was not necessary to expend resources on changes this at this time.</i></p>

## **Approval of 2024 practising fees application made by the Costs Lawyer Standards Board (CLSB) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

1. The LSB has approved an application made by the CLSB to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of practising fees charged by approved regulators.
2. Practising Fees are payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by practising fees for one or more of the permitted purposes which are set out in section 51(4) of the Act and the Practising Fee Rules 2021 (the "Rules")<sup>1</sup>.
3. Practising fees are payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee as required by section 51 of the Act. The Association of Costs Lawyers (ACL) is an approved regulator, and the CLSB is the regulatory body to which ACL has delegated its regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)<sup>2</sup> which provides guidance on each of the Rules.
5. This notice sets out the decision taken, including an assessment of the practising fees application.

### **Summary and overview of practising fees application and decision**

6. The application submitted by the CLSB<sup>3</sup> proposes that the practising fees to be charged to costs lawyers will be the amount set out in the table below. The CLSB's projected total income from practising fees for 2025 is £225,315, which is based on the

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf>

<sup>2</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf>

<sup>3</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2024/09/CLSB-PCF-2025-application-6-September-2024.pdf>

assumption that 695 costs lawyers will pay a practising fee<sup>4</sup>. This is an increase from budgeted practicing fee income of £202,150 in 2024, which was based on 660 cost lawyers paying the practising fee.

Individual fee	2024	Proposed 2025
All costs lawyers	£290	£305

7. Of the total amount of practising fees to be collected (£225,416), £197,320 (87.5%) will be retained by the CLSB, while the remaining £28,096 (12.5%) will be used to fund the work of the Legal Ombudsman, the Legal Services Board and Legal Choices.
8. Each costs lawyer's contribution for the above three organisations will be approximately as follows: £7 for the Legal Ombudsman (2.4% of the practising fee), £25 for the Legal Services Board (8.2% of the practising fee) and £8 for Legal Choices (2.7% of the practising fee)<sup>5</sup>. The funds from the practising fees raised by the CLSB are solely for its regulatory functions. The representative body (and approved regulator) for the Costs Lawyer profession, the ACL, raises its own funds through a separate membership fee.
9. Based on our assessment of the information provided to us, we are satisfied that the CLSB's activities for 2024, which will be funded by the practising fees, fall within the permitted purposes as set out in rule 16 of the Rules. The CLSB has provided a table at paragraph 9 of its application which explains that it intends to attribute fee income as follows:
  - Authorisation, foreign qualification recognition, supervision and disciplinary: 14%
  - Regulatory policy, external engagement and training: 31.5%
  - Strategy, governance, finance, staffing & supplier matters and data / compliance: 18%
  - Payment of levies and contribution to Legal Choices: 12.5%
  - Business Plan priorities: 24%
10. We are also satisfied that the CLSB has set its budget independently from the ACL, and that the CLSB has set out how it intends to discharge its regulatory functions in a way that is compatible with the regulatory objectives in accordance with the duties in section 28 of the Act.
11. We consider that the application demonstrates that the CLSB has planned its financial position for 2025.
12. The summary table prepared by the CLSB in its application sets out its allocation of the practising fees according to its activities, the associated permitted purposes and the expected benefit arising from the activity. The table provides transparency and accountability to the regulated community and the LSB. We consider that the application provides a clear and transparent summary as to how the CLSB will allocate its resources to fulfil its regulatory functions for the benefit of consumers and

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<sup>4</sup> Not all fee payers will pay the full fee as some will be subject to discounts and others will pay a partial fee as they join the profession during the practising year.

<sup>5</sup> Allocations at a per-lawyer level are estimates presented at the time of consultation and therefore vary slightly from the aggregate percentage in paragraph 7.

the wider public interest. It also demonstrates financial resilience through available reserves.

13. We further note that the engagement strategy described in the application has enabled the CLSB to adequately consult with its regulated community as to the level of its proposed practising fees for 2025.
14. Adequate consultation has enabled the CLSB to meaningfully consider the equality impact of the practising fees for 2025 on its regulated community. This is particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession. Connected to this, we note the CLSB's provision of a remissions policy for costs lawyers who reinstate their authorisation part way through the practising year, and do not then need to pay the practising fee in full. Further details concerning the remissions policy are set out at paragraph 26 below.

## **LSB assessment**

### **Budget for 2025 and financial information**

15. The application set out at pages 13 and 14 that the CLSB has budgeted expenditure of £225,416 and expects to raise an almost equivalent amount in practising fee income (£225,315).
16. The CLSB notes that a PCF of £305 will leave a shortfall of £101 between budgeted income and budgeted expenditure. The CLSB confirmed on page 14 of the application that the £101 shortfall can be covered by reducing the CLSB's 2024 contribution to reserves by £101 if necessary, which currently exceed its target level, as described in paragraph 18 below.
17. Page 13 of the application sets out that the CLSB budget assumes inflation of 3% based on CPI forecasts for the year.
18. The CLSB explained at paragraphs 23 - 24 of the application that its reserve policy was revised in 2022 and its target level of committed reserves has been revised to approximately six months' expenditure. The CLSB has already met the target level of uncommitted reserves (£110,000).
19. The CLSB also has committed reserves. As of 6 September 2024, the value of committed reserves is £24,090, which is 80% of the CLSB's target level (£30,000). This is an increase from just over 50% of the target as at the time of the previous practising fee application in 2023. In 2023 the CLSB also confirmed that, in line with its reserves policy, it would make further contributions until the target level for uncommitted reserves is met. The CLSB has explained that it intends to make a further contribution of £5,000, which will raise the committed reserve levels to just under 97%. The CLSB also explained that it also anticipated some expenditure from its committed reserves in the second half of 2024 to match a small amount of grant funding for which it had applied.
20. We also noted that CLSB's statutory accounts showed reserves at a higher level than in its practising fees application: at £270,886. The CLSB explained that this figure reflects the time of year when its accounts are prepared, whereby remaining practising fee income from the previous year, and recent collections for the following year, are held simultaneously by the CLSB. The CLSB also explains that it operates a surplus that is used near the end of practising years to account for any deviations in expected income or expenditure. In its practicing fee application for 2026, we expect

the CLSB to set out the level of such surplus as at the end of 2024, and explain how it is taken into account when determining practising fees.

21. We note that CLSB has reassured itself that its reserves should be sufficient to meet any unexpected events.
22. We also previously encouraged the CLSB to consider implementing an external audit on its financial records every three to five years as a matter of good practice. The CLSB has confirmed its appointment of an independent firm to conduct an external audit of its accounts in 2025.

### Equality Impact Assessment

23. The CLSB provided at Annex 9 of the application, an initial Equality Impact Assessment (EIA) which considers the likely impact of the level of the practising fee on its regulated community, and against each of the protected characteristics. The initial EIA was included as part of the CLSB's consultation and asked if respondents would be adversely impacted by the level of the practising fee, and if so, how their needs could be met. Consultation respondents did not suggest that any group of practitioners would be unfairly or disproportionately burdened by the proposed practising fee level. Additionally, no respondents cited any view that the level of the practising fee would impact a person or group with protected characteristics.
24. The initial EIA showed a potential impact on the protected characteristics of sex (gender) and pregnancy and maternity as these groups may take extended periods of leave, such as maternity, shared parental or any other type of leave that may be taken by anyone with these protected characteristics (collectively referred to as "parental leave"). The CLSB continues to operate a remissions policy, which enables practitioners to seek a reduction in their fee for the whole period they are on parental leave, regardless of the start date.
25. We consider that the application provides meaningful consideration of equality issues and demonstrates that this has informed the CLSB's approach, which is positive and is particularly relevant to the regulatory objective of encouraging an independent, strong, diverse and effective profession.

### **Decision**

26. The LSB has approved the practising fee application submitted by the CLSB for 2024 under section 51 of the Act.

### **Summary of expectations for the CLSB's practising fee application for 2025**

27. The CLSB to provide a full breakdown of any surplus as it stood at the end of 2024, so that we may understand how it is considered and taken account of when determining practising fees.

**Craig Westwood, Chief Executive**  
**Acting under delegated authority granted by the Legal Services Board**  
**3 October 2024**

## CLSB Risk Register

Last reviewed: 17 July 2024

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This risk register was developed in March 2023 following a review of the CLSB's risk framework. It maps the potential risks that could impact the CLSB's effectiveness, either directly or indirectly, through their influence on the market that we regulate. Previous versions of our operational and regulatory risk registers are available by [contacting us](#).

This risk register is divided into four sections:

A. Sources of risk for horizon scanning (market risks) .....	2
B. Risk areas for ongoing monitoring .....	3
C. Key risk areas for mitigation .....	6
D. Risk areas for longer-term structural reform .....	8

## A. Sources of risk for horizon scanning (market risks)

These sources have the potential to generate new risks or exacerbate existing ones, and are therefore key targets for horizon scanning. They relate to what is happening in the costs law market, in areas such as:

- client demand and need;
- the supply of services by Costs Lawyers and other market participants;
- the overall legislative and regulatory environment affecting the market; and
- the impact of activity in other parts of the legal sector, including actions of other regulators.

Category of risk	Main sources of risk
Political/legal/regulatory	Changes in public sector spending, court rules or legislation driving costs control/capping.
Political/legal/regulatory	New regulation of ancillary industries, such as third party litigation funding.
Political/legal/regulatory	Changes in the Civil Procedure Rules or common law more broadly.
Economic	Trends in the litigation market and commercial developments in litigation funding options.
Economic	New entrants to the market and new service offerings, as well as consolidation of firms.
Social	Consumer use of online legal services, including the emergence of costs risk.
Social	Demand for different pathways to legal professional qualification.
Technological	Progress in court digitisation and e-billing.
Technological	Law firm take up of technology, including case management and billing systems, as well as the use of AI.
Technological	Adoption of blockchain technology and smart contracts.

## B. Risk areas for ongoing monitoring

These are specific risks, identified from horizon scanning across the risk sources described in section A above, that could foreseeably impact the regulatory objectives in section 1 of the Legal Services Act 2007. These risks are subject to ongoing monitoring to determine whether their impact can and should be actively managed by the CLSB (see section C below).

Even though many of these risks are outside of our control, their impact can be mitigated generally by fostering:

- Robustness – building strength and depth in the profession by increasing numbers, improving the quality of both initial and ongoing training and widening the range of expertise and skills the profession is able to offer.
- Resilience – improving the ability of Costs Lawyers to redeploy their skills within a changing market.

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
Protecting and promoting the public interest	<ul style="list-style-type: none"><li>– Capping of recoverable costs</li><li>– Reduction in the size of the NHS litigation budget</li><li>– Wasting of court time by unqualified costs draftsmen, authorised practitioners lacking in costs competency, or poor practices of Costs Lawyers</li></ul>	<ul style="list-style-type: none"><li>– Risks from unqualified suppliers</li><li>– Risks from ineffective regulation</li><li>– Risks from public sector budget cuts targeting litigation, or other forms of intervention in the costs market, in ways that prioritise short term budgetary savings over longer term public interest</li></ul>
Supporting the constitutional principle of the rule of law	<ul style="list-style-type: none"><li>– Shrinking legal aid budget and falling solicitor numbers providing legal aid services</li><li>– Court promotion of technology and mediation to overcome backlog</li><li>– Civil procedure review designed to improve the functioning of the courts and introduction of e-billing as standard</li></ul>	<ul style="list-style-type: none"><li>– Risks from policy, legislative or rule changes that impact on demand for Costs Lawyer services or viability of providing services to those with legal need</li></ul>
Improving access to justice	<ul style="list-style-type: none"><li>– Individuals or groups excluded from access to justice by excessive costs or costs uncertainty</li><li>– Expansion of fixed costs regime, reforms to PI regime, reforms to judicial review</li></ul>	<ul style="list-style-type: none"><li>– Risks from inadequate supply of costs information services</li><li>– Risks from policy reforms designed to reduce availability of contested litigation</li></ul>



Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
	<ul style="list-style-type: none"> <li>– Solicitors unable to claim full legitimate costs from legal aid budget without Costs Lawyers</li> <li>– Third party funders discouraged by inadequate budgeting and uncertainty of rules around contingency arrangements</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient numbers of legal aid trained Costs Lawyers</li> <li>– Risks from inadequate service from Costs Lawyers or unqualified costs draftsmen</li> </ul>
Protecting and promoting the interests of consumers	<ul style="list-style-type: none"> <li>– Consumers unable to access independent advice on costs</li> <li>– Consumers are excluded from civil litigation or are inadequately served due to limitations on funding options (including fixed fees on specialist legal services)</li> <li>– Self-represented litigants incur significant adverse costs risk/liability due to lack of individualised advice</li> <li>– Consumer risk from unregulated no win no fee advisors</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient supply of Costs Lawyers focused on consumer market</li> <li>– Risks from “capture” of Costs Lawyer services by professional (mainly solicitor) clients</li> <li>– Risks from public sector budget cuts targeting litigation or policy interventions designed to stem legal costs</li> <li>– Risks from gaps in regulation</li> </ul>
Promoting competition in the provision of legal services by authorised persons	<ul style="list-style-type: none"> <li>– Law firm mergers hampered by lack of accurate information about WIP; investors discouraged by lack of clarity around value of law firms</li> <li>– New entrants to the legal sector cannot access independent information about value of certain areas of litigation activity</li> <li>– Increased use of technology in law firms substituting for Costs Lawyers</li> <li>– Concerns about market risks disincentivise new qualifiers or encourage qualified Costs Lawyers out of the profession</li> </ul>	<ul style="list-style-type: none"> <li>– Risks from insufficient supply of properly trained Costs Lawyers to provide essential services</li> <li>– Risks from new service areas with potential risks to clients and firms</li> <li>– Risks from the activities of other regulators</li> <li>– Risks from lack of awareness/ability of Costs Lawyers to embrace and adapt to technology</li> </ul>

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
	<ul style="list-style-type: none"> <li>Costs firms offering new unregulated services alongside reserved legal activities, such as litigation funding options for clients</li> <li>SRA regulation fails to prevent employer collapse creating problems in the Costs Lawyer market</li> </ul>	
Encouraging an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> <li>Insufficient numbers of Costs Lawyers are available to the market generally</li> <li>Insufficient supply of independent costs law firms and practitioners in the market</li> <li>Costs Lawyers' independence is undermined by an actual or perceived conflict between the interests of their immediate (professional) client and their underlying client</li> <li>Costs Lawyers are not appropriately trained and up-to-date</li> <li>Costs Lawyer demographics do not reflect society</li> </ul>	<ul style="list-style-type: none"> <li>Risks from insufficient supply of properly trained Costs Lawyers</li> <li>Risks from Costs Lawyers being absorbed into solicitors firms/SRA regulation</li> <li>Risks from "capture" of Costs Lawyer services by professional clients</li> <li>Risks from ineffective CLSB regulatory arrangements</li> <li>Risks from limited diversity of new entrants to the profession</li> </ul>
Promoting and maintaining adherence to the professional principles	<ul style="list-style-type: none"> <li>Disciplinary issues/complaints about Costs Lawyers leading to poor consumer outcomes</li> <li>Failure of Costs Lawyers to maintain proper standards of work</li> <li>Costs law firms unwilling or unable to implement sufficient systems and controls</li> </ul>	<ul style="list-style-type: none"> <li>Risks from ineffective CLSB regulatory arrangements</li> <li>Risks from lack of entity-level regulation in the costs market</li> </ul>

## C. Key risk areas for mitigation

These consolidate the key risks identified in section B over which we have some degree of influence or control through our regulatory levers, and which we can therefore work to mitigate over time. The need to proactively manage these risks influences our regulatory activities, including our approach to supervision and the priorities in our annual Business Plans. The table below sets out the priority workstreams that are aimed at mitigating or managing these risks in the current year.

	Regulatory risks	Current priority initiatives for mitigating risks
1.	Poor client outcomes arise from substandard conduct, inadequate service or lack of competence amongst Costs Lawyers.	<ul style="list-style-type: none"> <li>2024 Business Plan priority 6: <i>Implement changes to the Costs Lawyer Code of Conduct, including by reviewing all published regulatory arrangements, guidance, policies and web content to ensure alignment with the new Code.</i></li> <li>2024 Business Plan priority 7: <i>Carry out the next two-year review of changes to the Disciplinary Rules and Procedures, looking at second tier complaints handled during the review period as well as any good practice examples or learnings from our or other regulators' work.</i></li> <li>2024 Business Plan priority 8: <i>Carry out the first phase of evaluation activities relating to the new framework for qualifying as a Costs Lawyer.</i></li> <li>2024 Business Plan priority 12: <i>Investigate whether a new supervision framework for client care letters is warranted based on evidence of client outcomes.</i></li> <li>Update and augment supporting materials for CPD and complaints procedures, and publish "lessons learned" for the profession, following supervisory audits (H1 2024).</li> </ul>
2.	Costs Lawyers offer new areas of service without adequate consumer protections or assessment of risk to consumers.	<ul style="list-style-type: none"> <li>2024 Business Plan priority 4: <i>Embed the B2C regulatory framework with the group of Costs Lawyers that deliver services directly to consumers.</i></li> <li>2024 Business Plan priority 5: <i>Publish the second annual Risk Outlook for the profession and assess the impact and future direction of this initiative.</i></li> </ul>
3.	Regulatory deterrents or barriers to innovation limit the Costs Lawyer profession.	<ul style="list-style-type: none"> <li>2024 Business Plan priority 6: See above.</li> <li>2024 Business Plan priority 13: <i>Modernise the way we track enquiries from external sources to facilitate reporting and trend analysis.</i></li> </ul>

		<ul style="list-style-type: none"> <li>• Future of Regulation project: “Addressing unmet legal need” workstream.</li> <li>• Future of Regulation project: “Technology and AI” workstream.</li> </ul>
4.	Independence of the profession is compromised through capture by certain types of clients or practising arrangements.	<ul style="list-style-type: none"> <li>• 2024 Business Plan priority 6: See above.</li> <li>• 2024 Business Plan priority 10: <i>Develop new guidance to address risks identified in the following areas: (i) setting up a new practice; and (ii) expectations on (unregulated) costs firms.</i></li> <li>• Future of Regulation project: “Reducing legal costs” workstream.</li> <li>• Future of Regulation project: “Detecting and preventing economic crime” workstream.</li> </ul>
5.	New Costs Lawyer Qualification fails to attract sufficient student numbers or sufficiently diverse cohorts.	<ul style="list-style-type: none"> <li>• 2024 Business Plan priority 1: <i>In collaboration with ACL Training, oversee the first year of delivery of the new Costs Lawyer Qualification, including by: (i) carrying out the first annual monitoring process under the Accredited Study Provider Scheme Handbook; (ii) developing additional guidance and materials on the regulatory aspects of qualifying, based on student feedback; (iii) communicating the responsibilities and benefits of regulation to new student cohorts.</i></li> <li>• 2024 Business Plan priority 3: <i>Develop and begin to implement a comprehensive, long-term communications strategy, aimed at supporting each of the five strategic goals in our new mid-term organisational strategy in a cohesive and systematic way.</i></li> <li>• 2024 Business Plan priority 11: <i>Develop the next phase of our diversity and inclusion workplan by reference to the new mid-term strategy.</i></li> <li>• Work with stakeholders to develop an apprenticeship route of entry into the profession.</li> </ul>
6.	The Costs Lawyer Competency Statement or Costs Lawyer Qualification fails to ensure that newly qualified Costs Lawyers are equipped for modern practice.	<ul style="list-style-type: none"> <li>• 2024 Business Plan priority 9: <i>Align our work on ongoing competency – including the expanded Competency Statement – with our existing framework for continuing professional development (CPD) and develop additional resources for practitioners where appropriate.</i></li> </ul>

## D. Risk areas for longer-term structural reform

Our recent research and project work has identified structural risks in relation to the regulation of the costs law market. Mitigating these risks is fundamental to our regulatory approach and informs our longer-term strategic planning.

Risk statement	Source of risk	Strategic question to answer
There is a gap in how the public interest is defined/considered in the context of legal costs.	Costs Lawyers rarely serve consumers directly. There is a significant public interest issue at the heart of the costs market, but this may lie less in the protection of consumers and more in dealing with the market failure in legal costs management generally. Such a market failure appears to exist as there is no actor, outside the courts, that is currently tasked with ensuring the efficient use of resources to achieve appropriate and proportionate resolution of legal problems.	What does promoting the public interest mean in the context of the costs law market?
The authorisation of Costs Lawyers is not aligned with the public interest.	If the CLSB regulates primarily to protect consumers, it risks becoming increasingly less relevant to Costs Lawyers, who can work outside the scope of authorisation. Yet the regulatory agenda driven by the Legal Services Board, in fulfilment of its remit under the Legal Services Act, is focused on consumer-facing work and addressing unmet legal need. This model is misaligned with the public interest problem that needs to be addressed in the costs law market, and thus with impactful regulation of the Costs Lawyer profession.	What should the role of Costs Lawyers be in the legal market (i.e. what are Costs Lawyers for?) and how can that best be differentiated, through the CLSB's regulatory framework, from the role played by unregulated advisers to promote the public interest?

**For ~~unregulated employers~~  
~~of Costs Lawyers~~costs law  
firms**



## Costs Lawyer Standards Board

CLSB

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# Who is this guidance for?

1. You should read this guidance if you have responsibility for a business that:
  - ~~employs Costs Lawyers or has officers (such as partners or directors) who are Costs Lawyers; and~~
  - markets or provides costs law services; and
  - is not authorised by a regulator (such as the Solicitors Regulation Authority) under the Legal Services Act 2007 (LSA).

~~We refer to s~~Such businesses are often referred to as “unregulated-employers” because they are not regulated specifically under the LSA, although they are likely to be regulated in other ways, not least under general consumer protection legislation.
2. Many ~~Costs Lawyers~~costs advisers have established partnerships, limited liability partnerships, limited companies or other vehicles through which they work. We refer to these organisations as costs law firms. Costs law firms often employ a combination of regulated Costs Lawyers, unregulated costs draftsmen, paralegals and other staff. Because the CLSB only regulates individuals and not organisations, these too are “unregulated-employers” organisations even if they are owned by or employ regulated individuals.
3. This guidance is ~~advisory; the CLSB has no direct regulatory reach over unregulated employers~~relevant to anyone who has a position of responsibility in a costs law firm. Aspects of the guidance will also be relevant to unregulated organisations that employ Costs Lawyers on an “in-house” basis, such as insurers, litigation funders and government agencies. However, the more control a Costs Lawyer has over their unregulated employer (for example, if they are a director or partner) the more we will hold that Costs Lawyer responsible for ensuring that the unregulated employer puts in place procedures that enable Costs Lawyers who work for the business to comply with the Code of Conduct and their other regulatory obligations.



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4. ~~Of course, a~~ A Costs Lawyer will always remain liable for their personal conduct within a costs law firm ~~unregulated employer~~. Where the practices or arrangements of an unregulated employer conflict with the regulatory obligations of a Costs Lawyer, then if the Costs Lawyer is unable to resolve that conflict it is likely that they will need to leave their employment.

4.5. In addition, the more control a Costs Lawyer has over their organisation (for example, if they are a director or partner) the more likely it is that we will hold that Costs Lawyer responsible for ensuring the organisation puts in place procedures that enable Costs Lawyers who work for the business to comply with the Code of Conduct and their other regulatory obligations.

5.6. It is therefore very important that ~~you~~ everyone working in a costs law firm environment understands the professional obligations to which a Costs Lawyer is subject. ~~Employers~~ Costs law firms should not create an environment where a Costs Lawyer cannot comply with their obligations and should not penalise a Costs Lawyer for complying with them. Contracts of employment should reflect the Costs Lawyers' professional obligations.

6.7. There is more detailed guidance on what many of these issues mean for Costs Lawyers in the rules and guidance set out in the Costs Lawyer Handbook.

## Reserved legal activities

7.8. Under the LSA, certain legal activities are reserved to authorised persons, meaning that only qualified, regulated practitioners – such as Costs Lawyers – can undertake those activities.

8.9. Costs Lawyers are authorised to carry out the following reserved legal activities in unauthorised businesses:

- conducting litigation in relation to costs;
- appearing before and addressing a court (exercising a right of audience) in proceedings or on issues that relate to costs;



- 
- administering oaths.

See our [Guidance Note](#) on reserved legal activity rights for more information.

~~9.10.~~ The above reserved legal activities can be undertaken by a Costs Lawyer for the benefit of their unregulated employer if they work “in-house”, or can be undertaken. ~~For example, a Costs Lawyer might work in a bank and conduct costs litigation on behalf of that bank. This is generally referred to as being an “in-house” Costs Lawyer, and the unregulated employer will be regarded as the Costs Lawyer’s client for regulatory purposes. Alternatively, a Costs Lawyer can carry out the above reserved legal activities~~ directly to or for ~~the unregulated employer’s~~ a costs law firm’s external clients.

~~10.11.~~ Costs Lawyers cannot delegate their right to carry on reserved legal activities to non-authorised members of staff, such as costs draftsmen. It is an offence under the LSA for anyone who is not authorised or not an exempt person (under Schedule 3 of the LSA) to carry on a reserved legal activity.

~~11.12.~~ However, Costs Lawyers may, for example, bring a non-authorised person with them to court to take notes, and courts may also allow non-authorised persons to address them in certain hearings.

~~12.13.~~ Costs Lawyers may also delegate ancillary tasks (such as preparing a draft of a document) to non-authorised persons, providing it is the Costs Lawyer who is conducting any litigation and, for example, approving and signing any documentation filed with the court.

~~13.14.~~ A Costs Lawyer who chooses to delegate a task to a colleague remains responsible for regulatory compliance and for client outcomes. The Costs Lawyer must therefore retain proper oversight of the matter and supervise their colleague appropriately. This includes ensuring that:

- delegated tasks are carried out in accordance with the CLSB’s regulatory arrangements;

- the client understands in advance that the task will be delegated to a person who is not an authorised Costs Lawyer;
- the delegation complies with the Costs Lawyer Code of Conduct, in particular that delegating the task is in the client's best interests; and
- the insurance policy upon which the Costs Lawyer relies extends to cover the outcome of any delegated tasks.

## Some core obligations

44.15. Costs Lawyers are obliged to follow the seven principles of professional conduct set out in the Code of Conduct. They must:

Principle 1: Act with honesty and integrity and maintain their independence.

Principle 2: Comply with their duty to the court and promote the proper administration of justice.

Principle 3: Act in the best interests of their client.

Principle 4: Provide a good quality of work and service to their client.

Principle 5: Deal with the regulators and the Legal Ombudsman (LeO) in an open and co-operative way.

Principle 6: Treat everyone fairly and equitably, and with dignity and respect.

Principle 7: Keep the affairs of their clients confidential.

45.16. Under Principle 2, a Costs Lawyer's duty to the court means that (amongst other things) Costs Lawyers cannot mislead the court, or knowingly allow their clients or their employer to do so, even inadvertently.

16.17. Under Principle 5, Costs Lawyers have duties of disclosure to the CLSB. ~~As an employer, you~~ Costs law firms should be aware that Costs Lawyers might need to disclose matters relating to ~~your~~ the firm's work or business to us if they relate to compliance with our regulatory rules. Your contracts with Costs Lawyers should not prohibit disclosure by them of information in accordance with their professional obligations. Costs Lawyers also have duties of disclosure to LeO; these are dealt with below (see "Complaints about a Costs Lawyer").

~~17.~~18. Costs Lawyers are also required, under our Practising Rules and Continuing Professional Development (CPD) Rules in the [Costs Lawyer Handbook](#), to maintain their knowledge and undertake ongoing training to ensure they remain competent to fulfil their role. ~~As an employer, you~~ [Costs law firms](#) should provide Costs Lawyers with the time and opportunity to maintain and build on their professional skills. While you are not obliged to pay for a Costs Lawyer's CPD training, you should keep in mind the benefits to your organisation and your clients of Costs Lawyers having access to high quality, relevant learning activities. You can read more about Costs Lawyers' CPD obligations ~~in our Guidance Note on~~ [our CPD webpage](#).

## Supervision

~~18.~~19. You should have an effective system of supervision in place within your ~~organisation-costs law firm~~ to help ensure that Costs Lawyers meet their own regulatory obligations when they are carrying out work, and that Costs Lawyers themselves supervise staff appropriately, as explained at paragraph ~~14~~3 above.

~~19.~~20. An effective system of supervision is even more important if a large proportion of your staff are working at home for some or all of the time. This will include maintaining regular contact and checking work online where possible.

## ~~Requirements when the Costs Lawyer is providing services to external clients~~ [Costs law firms and client protection](#)

~~20. When the Costs Lawyer is not purely "in-house", and is providing services to or for external clients, then there are additional obligations and considerations to take into account.~~

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## Professional indemnity insurance

21. Costs Lawyers are required to have professional indemnity insurance (PII) to cover claims against them for negligence.
22. Practising Rule 9 provides that they must:
  - have PII cover at a minimum level of £100,000 (for any one claim), to include loss of documents; and
  - on an ongoing basis, assess all financial risk associated with their work and ensure they have PII in excess of the minimum at a level commensurate with that risk.
23. The insurance policy will normally be in the name of the organisation. ~~As an employer you~~ Costs law firms should therefore make sure that the policy meets the above conditions and covers all work undertaken by the Costs Lawyer, including any delegated work for which the Costs Lawyer is responsible. This will include a regular review of the financial risks to be insured – something that a prudent business will do in any event. See our Guidance Note on indemnity insurance for further information.

## Client money

24. Costs Lawyers are not allowed to hold client money, pursuant to Principle 3.6 ~~of the~~ the Code of Conduct. So, if as an unregulated ~~employer~~ costs law firm you do hold money that belongs to your clients, the relevant account should not be in a Costs Lawyer's name.
25. By client money we mean, for example, money:
  - from an opponent in contentious proceedings, to satisfy a costs award made in the client's favour;
  - from your client to satisfy a costs award made against that client; or
  - money paid in advance on account of charges for your services or disbursements such as court fees.

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26. Costs Lawyers can however receive payment in their own name from clients in settlement of an invoice for services or for disbursements already incurred. They can also make use of a Third Party Managed Account (TPMA), whereby a reputable financial institution handles the client's money in a pre-agreed way.
  27. Where ~~an unregulated employer~~ a costs law firm has its own legal identity (usually a limited company or LLP), then if any client money is held by that body it will not be held by the employed Costs Lawyer. In such cases, the prohibition in Principle 3.6 is not directly relevant. However, Costs Lawyers who work under this kind of arrangement still need to uphold their professional obligations, which will include safeguarding clients' money where relevant. See our [Guidance Note](#) on handling client money for further information.

## Complaints about a Costs Lawyer

28. Under the Code of Conduct, a Costs Lawyer must provide for an effective complaints procedure for handling complaints from clients, covering issues relating to their professional conduct as well as the service they provide, in line with the CLSB's guidance on complaints procedures.
29. They must ensure that complaints are dealt with promptly (within a maximum eight-week period from date of receipt) openly and fairly, and that appropriate provisions for redress exist.
30. If a complaint is not resolved to the satisfaction of the complainant, or is not resolved within eight weeks, individual clients have the right to take a complaint about the standard of service provided by the Costs Lawyer to LeO. Complaints about a Costs Lawyer's professional conduct can also be considered by the CLSB. The Costs Lawyer must tell clients about the right to escalate a complaint to LeO or the CLSB both at the time of engagement and when any complaint is made, and provide contact details for those organisations.
31. If LeO upholds a complaint it has a range of options available to it, including ordering a Costs Lawyer to reduce a bill or to pay compensation. As well as looking

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at the substance of the complaint, LeO will look at the way in which the complaint was handled and this will be a factor in its determination, including whether to charge the Costs Lawyer the case fee for the matter.

- 32. If you do not already have one, your business-costs law firm will need to establish a complaints procedure that complies with these provisions as far as the work of the Costs Lawyer and any work that they supervise is concerned.
- 33. You should ensure that your employment contract with the Costs Lawyer permits them to disclose relevant information to LeO and the CLSB.
- 34. Issues may arise where a client complains about a matter where the Costs Lawyer did not perform all of the work and some of it was carried out by a non-authorised person such as a costs draftsman. LeO only has authority to deal with complaints in relation to authorised persons under the LSA. LeO may therefore decide to deal with only part of the complaint, or may decide to treat the whole case as the Costs Lawyer's responsibility where the Costs Lawyer was in charge of the matter or supervising the unqualified staff.

## Information to clients

- 35. The Code of Conduct requires Costs Lawyers to ensure that clients are able to make informed decisions about the work being undertaken on their behalf throughout the lifetime of a matter, including how it will be priced, the costs incurred and the likely overall cost of the matter (including any potential liability for the costs of other parties).
- 36. This means that a Costs Lawyer must give an estimate of fees and details of their charging structure to clients in advance of instruction. Where that estimate subsequently becomes inaccurate or that charging structure changes, the Costs Lawyer must provide an updated estimate or notice of revised charges.

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37. The Costs Lawyer must also let the client know what steps will be taken in the matter and the likely timetable. For more detailed information, see our [Guidance Notes](#) on price transparency and client care letters.
38. Any publicity of your business must not be misleading or inaccurate insofar as it concerns the Costs Lawyer or their work.
39. It is important that costs law firms make it clear to clients ~~are clear as to~~ which work is going to be carried out by a Costs Lawyer and which work will be undertaken by staff who are not authorised under the LSA, and what the consequences are for the client. In particular:
- Whilst the client will have a right to complain about the Costs Lawyer's service to LeO or about their conduct to the CLSB, they will have no such rights in relation to the unauthorised person.
  - Whilst professional indemnity insurance will be in place to cover any claim relating to the Costs Lawyer's work, that insurance might not extend to the work of unauthorised persons who are not supervised by the Costs Lawyer.

## Conflicts of interest

40. A Costs Lawyer must decline to act if it would not be in the client's best interests to do so, including where that client's interests conflict with the Costs Lawyer's interests or with the interests of another client (other than in certain circumstances). See Principle 3.1a of the Code of Conduct and our [Guidance Note](#) on conflicts of interest.
41. 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.

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42. A Costs Lawyer must also decline to act for a client if the client has a conflict of interest with you, as the Costs Lawyer's employer, or with a fellow employee. This may mean, for example, that if the Costs Lawyer considers that a fellow employee at your costs law firm has been negligent in relation to the client's case then the Costs Lawyer may be obliged to inform the client and to stop acting for them.

~~42.~~43. Your costs law firm will want to put systems in place to ensure that conflicts of interest do not arise or, if they do arise, they are identified and properly managed. This might include, for example, erecting information barriers if a Costs Lawyer is acting (or has acted) on a matter for a client and your firm intends to have another employee work on a related matter in a way that could be adverse to the client's interests.

## Confidentiality

~~43.~~44. Under Principle 7.1 of the Code of Conduct, a Costs Lawyer must keep the affairs of clients and 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.

~~44.~~45. You Costs law firms will want to ensure ~~as an employer~~ that ~~you they~~ have appropriate arrangements in place to help the Costs Lawyer meet their obligations in relation to confidentiality. This will also assist you in complying with the requirements of data protection legislation. For example:

- Information should not be passed to third parties (for example, for marketing purposes) without the client's consent.
- Personal data should not be used for a purpose other than for which it was supplied (for example, for cross-selling of services) without consent.
- Client records should be held securely.

46. Confidential information regarding one client should not be shared with another.



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## Complying with general consumer protection legislation

47. Costs law firms, like all other businesses, must comply with consumer protection legislation when marketing or providing costs law services to consumers. Consumer protection laws impose requirements around contract terms, cancellation rights, information provision, advertising, ADR and complaint handling, and the way in which services must be performed. Whether or not a costs law firm employs Costs Lawyers, these rules must be followed.
48. The CLSB has published a comprehensive guide to dealing with consumers, which applies to all costs law firms.

## Setting up or closing down a costs law firm

49. There are many things to consider when setting up a costs law practice, regardless of whether you intend to employ Costs Lawyers. Our Guidance Note on setting up a practice provides advice on issues such as whether your firm needs to be authorised, what type of services you can provide, and what arrangements you will need to put in place.
50. It also explains how you should refer to the regulatory status of your costs law firm and how to use the CLSB's Mark of Regulation.
- ~~45.~~51. Equally, if you are closing a costs law firm, you will need to take steps to protect your clients and ensure minimal disruption to third parties. Our Guidance Note on regulatory issues when closing down a practice covers matters such as insurance run-off, managing client files and informing stakeholders.

**END**

# Costs Lawyers, Technology and Regulation

## Hook Tanganza report

26 September 2024

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### Introduction

1. This paper provides background to the report, *Costs Lawyers, Technology and Regulation*, commissioned from Hook Tanganza, at Item 7.3B of your board pack.
2. This project aligns with objectives B, D and E of the 2024-27 strategy as follows:
  - *Strategic objective B*: We will be perceived as an expert on the market that we regulate, proactively adding value for Costs Lawyers, their businesses, their clients and the wider justice system, and we will effectively communicate that value to those in the costs community who decide each year whether or not to opt-in to regulation.
  - *Strategic objective D*: We will continue to create, evaluate and improve a regulatory model that is uniquely suited to the unusual characteristics of the costs law market, finding inventive ways to tackle the challenges presented by the legislative environment in which we operate
  - *Strategic objective E*: We will build long-term organisational robustness and resilience to guard against external risks and shocks, and we will promote the same resilience within the Costs Lawyer profession.

### Background

3. The RPF [report](#) found that there was no evidence of any ground-breaking use of technology in the costs market, but widespread use of costs software, such as CostsMaster. Costs Lawyers who took part in the research were asked how they use technology in their work. Of those who responded, 60% said they used costs-specific software, 25% used firm case management technology, 13% used technology in relation to automation of the courts, and 2% were using AI-driven case outcome prediction software.
4. The CLSB [policy statement on good consumer outcomes](#) identified innovation as one of seven key categories of consumer outcomes that are important to us. The outcomes we want to see are that consumers benefit from innovative ways to supply services, and that innovation reduces prices and drives up quality and accessibility. This aligns with the LSB's aim of ensuring that technology and innovation are used to support improved access to legal services and address unmet need.
5. The LSB consulted on draft guidance on promoting technology and innovation to improve access to legal services in 2023. The final guidance was published on, and effective from,

23 April 2024. The three guidance outcomes set out the LSB's expectations for regulators, which are to ensure that:

1. Regulation enables the use of technology and innovation to support improved access to legal services and to address unmet need.
  2. Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.
  3. Regulation actively fosters a regulatory environment that is open to technology providers and innovators.
6. Our [2024 Annual Risk Outlook](#) also identified several trends relating to the use of technology that are likely to have an impact on Costs Lawyers.
7. Given this, technology and AI is a key strand of our project on how regulation of Costs Lawyers should evolve into the future. The aims of this strand are to ensure Costs Lawyers have a robust and clear framework for using technology in their work that does not create inadvertent barriers, and to raise awareness of the regulatory risks of using technology.
8. In May 2024, we commissioned Hook Tanganza to carry out research to understand:
- What, if any, changes there have been in how Costs Lawyers are using technology and AI since the Regulators Pioneer Fund ('RPF') report.
  - New opportunities that may have emerged since the RPF report – or which may emerge in the future for regulated Costs Lawyers – related to technology and AI.
  - Emerging risks from technology and AI facing Costs Lawyers.
  - Barriers to Costs Lawyers making greater use of technology and AI.
  - Whether there are differences in how the unregulated costs sector/other areas of the market are using technology and AI compared to regulated Costs Lawyers.
  - Anything additional that the CLSB might need to do to comply with the LSB's guidance – for example, any gaps in our regulatory framework or potential barriers that we need to address.
9. The findings are set out in the attached report. Some particularly interesting findings include:
- Costs Lawyers are broadly optimistic about the potential impact of technology on their work. Use of software such as CostsMaster, Proclaim and other case management software is commonplace, and there is potential scope for AI to play a bigger role in automating routine tasks, eliminating manual data entry, speeding up legal research and providing predictive insights.
  - Those surveyed identified training on technology issues as a high priority for Costs Lawyers.
  - Barriers to greater adoption and dissemination of technology include concerns over regulatory compliance, the cost of technology investment, and making the business case for technology investment in the costs sector.
  - The availability of appropriate tools is a major barrier to greater use of technology. There is a growing number of individual developers in the market with AI capability who may

be able to run low-cost projects to help costs law firms find solutions to their individual issues. However, the level of awareness of what is needed and what is possible on both sides is currently low.

10. The report makes 15 recommendations and identifies 8 priority actions that the CLSB could take to help Costs Lawyers increase their take-up of AI and other new technologies. These priority actions include using competency and CPD requirements to encourage Costs Lawyers to stay up to date with developments in technology, providing guidance on the ethical issues of using AI, and emphasising cyber security as an area of risk.

## Next steps

11. The board is asked to consider the recommendations and, if content, approve them for adoption.
12. Following the meeting, the report will be published on the CLSB website and the findings communicated to the profession via the newsletter and social media.
13. We will develop an action plan for taking the recommendations forward, once adopted by the board, and share the action plan with the board for approval in December.



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# Cost Lawyers, Technology and Regulation

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**Date:**

August 2024

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## Executive summary

This report has been commissioned from Hook Tangaza by the Costs Lawyer Standards Board ('CLSB'). It is intended to assist the CLSB in addressing the fifteen recommendations issued in April 2024 by the LSB to legal regulators on how they should address the issue of artificial intelligence ('AI') and new technologies.<sup>1</sup>

The report reviews the current take-up of new technologies by the Costs Lawyer profession and how this has changed in recent years. It also looks at the risks, opportunities, and barriers that the profession is facing. In doing so, the report draws on evidence gathered in May-June 2024 through a survey of Costs Lawyers and a series of interviews conducted with Costs Lawyers engaged in different types of organisations.

The report identifies actions which the CLSB could take to address most of the LSB's fifteen recommendations. It suggests a high/medium/low priority designation for each of these recommendations. This prioritisation takes into account both the significance of the barrier to the take-up of AI/technology addressed by the action being considered, and the impact that implementing the recommendations might have. Judgments about the priority to be accorded to any particular action are based on the needs expressed by Costs Lawyers in our survey and interviews. An assessment of the potential impact of following any of the LSB's specific recommendations is based on the size and role of the Costs Lawyer profession.

Eight priority actions that the CLSB could take to help Costs Lawyers increase their take-up of AI and other new technologies, and potentially assist consumers are highlighted. These eight recommendations reflect the current position of Costs Lawyers in the market, which has historically been to act as internal suppliers to other legal services providers. Although there is some evidence that there is now greater direct engagement between Costs Lawyers and consumers than in the past, such instructions still represent a very small proportion of overall Costs Lawyer activity. The prioritisation also considers the role and resources of the CLSB, which are limited by the scope of its regulatory remit and its small size and budget.

Some of the priority tasks identified draw on existing CLSB responsibilities and would not be unduly onerous for it to implement itself or to collaborate with others to achieve. These include education and training and awareness raising of technology issues for the profession, as well as the issuance of more specific guidance on potential ethical issues and closer collaboration with bodies such as the SRA and the courts on technology issues.

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<sup>1</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2024/04/Legal-Services-Board-update-on-AI-approach-April-2024-pdf.pdf>

There are other suggested priorities, however, that may be more challenging for the CLSB, given the size of the profession and the resources at its disposal. These include, for example, promoting engagement with developers and Costs Lawyers directly. The information gap between Costs Lawyers and developers is a common problem for small and fragmented professional services sectors, but there is a specific costs sector need which goes beyond simply awareness raising of the possible use cases for small legal businesses. This relates to the need to correct the specific costs market failure that exists due to the lack of suitable costs software incorporating AI. This could be remedied by increasing the cross-pollination of information and ideas between developers and the costs profession. The report acknowledges that this recommendation, and some of the others that involve more consumer-focused activity, may be more challenging to the CLSB in terms of resource availability and allocation. We have suggested, therefore, that these could be bundled together into a project for which separate grant funding or co-funding could be sought.



# Glossary

<b>ACL</b>	Association of Costs Lawyers
<b>ACLT</b>	Association of Costs Lawyers Training
<b>AI</b>	Artificial Intelligence
<b>Blockchain</b>	Blockchain is a shared, immutable ledger that facilitates the process of recording transactions and tracking assets in a business network.
<b>RCJ CAB</b>	Royal Courts of Justice Advice Bureau
<b>CLSB</b>	Costs Lawyer Standards Board
<b>Costs market</b>	The segment of the legal market which deals with the assessment, negotiation, and recovery of legal costs and covers all providers regardless of their employing organisation or regulated status. This may include firms that deal exclusively with Costs or individuals working on Costs matters in SRA regulated solicitor firms or in-house in the public or private sector.
<b>Costs Lawyer</b>	Legal professional regulated by the CLSB
<b>Costs law firm</b>	Organisation owned or part-owned by Costs Lawyers operating in the Costs market
<b>Costs draftsman</b>	Unregulated individual advising on costs matters.
<b>Data analytics</b>	The science of analysing raw data
<b>Generative AI</b>	Artificial Intelligence models based on language based neural networks that can simulate human responses and can generate high-quality text, images, and other content based on the data they were trained on.
<b>Hackathon</b>	A hackathon is a structured event designed to take place over a short, fixed period and to tackle a specific problem by bringing together users and developers
<b>LLM</b>	Large Language Model (type of generative AI)
<b>LSB</b>	Legal Services Board

<b>Metaverse</b>	The convergence of physical and virtual space accessed through computers and enabled by immersive technologies such as virtual reality, augmented reality and mixed reality
<b>No Code applications</b>	Applications that use visual drag-and-drop interfaces instead of code, enabling a user with no background in computer programming to generate content, undertake particular tasks, create websites etc
<b>Predictive AI</b>	Artificial intelligence programmes based on statistical analysis (as opposed to the neural networks of a generative AI programme). Most useful for numerical data, they can help to identify patterns, anticipate behaviours, and forecast future events
<b>Phishing</b>	Occurs when scammers or other cyber attackers deceive individuals into revealing sensitive information or installing malware such as viruses, worms, adware, or ransomware. The legal sector is particularly vulnerable as a target
<b>Quantum Computing</b>	Quantum computing overcomes the processing limits of traditional computers and significantly speeds up and expands the capacity of single processing units. It is still at an early stage of development
<b>RPF</b>	Regulators' Pioneer Fund
<b>SEO</b>	Search engine optimisation. This enables websites and content to be found more easily.
<b>SRA</b>	Solicitors Regulation Authority
<b>SRA regulated firm</b>	Organisation regulated as an entity by the SRA

# Introduction

## What does technological change in the legal services industry mean for the Costs sector?

Recent developments in AI and other cutting edge technologies look set to reshape traditional legal practice. A recent report from the management consultancy firm McKinsey<sup>2</sup> suggests that AI has the potential to automate around a quarter of the day-to-day tasks undertaken by US lawyers, whilst wider adoption of blockchain could revolutionize contract management and remove the need for lawyers to work on certain types of transactions altogether. Although this level of transformation is challenging, it could dramatically increase the efficiency of the legal industry and allow lawyers to focus on their true value added instead of on the performance of routine tasks. Over \$2.61 billion dollars were invested globally in 2023 in new legal tech ventures to unlock this potential<sup>3</sup>, so the pace of change and adoption of new technologies looks set to accelerate in the coming years.

A [LexisNexis AI survey](#) of over 1,200 legal professionals found in January 2024 that just over a quarter (26%) of those surveyed were using used generative AI tools, compared to only 11% six months earlier. Moreover, nearly two-thirds (62%) had used AI-related training for staff or were hiring AI experts to develop their digital transition.

In the UK, the digital transformation of the legal sector is gradually speeding up, prompted, inter alia by the National AI strategy<sup>4</sup> and leadership from ventures such as [Lawtech UK](#)<sup>5</sup>.

To date, however, the adoption of more sophisticated technologies in the UK has remained the preserve of those with characteristics that support greater innovation. A [2021 report for the Solicitors Regulation Authority](#)<sup>6</sup> found that the law firms most likely to be adopting new technologies like AI, were either likely to have been recently established, operating as alternative business structures or those serving larger corporate clients.

The Legal Services Board (LSB) has also entered this debate. Mindful of the regulatory objectives set out in the Legal Services Act 2007, it has made it clear that it would like to see both growth in the general use of new technologies in the legal sector, and the better use of technology to improve consumer access to legal

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<sup>2</sup> [Technical Potential for Automation, McKinsey](#)

<sup>3</sup> [Law360.com](#)

<sup>4</sup> [UK National AI Strategy](#)

<sup>5</sup> <https://lawtechuk.io/>

<sup>6</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/chapter-6---technology-and-innovation-in-legal-services.pdf?version=4a1bfe>

services<sup>7</sup>. The LSB's own research suggests that technological innovation could help to go some way towards helping to provide justice solutions for the third of people facing legal disputes in England and Wales without the advice and support they need.

In April 2024, the LSB issued [guidance to regulators](#)<sup>8</sup> on technology and innovation. This is intended to prompt legal regulators to take proactive steps to help create an environment that improves consumer access to legal services.

The guidance sets out three outcomes that regulators should seek to achieve through their regulatory frameworks:

- Greater facilitation of the use of technology and innovation to support improved access to legal services and to address unmet need.
- A balance in the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.
- A regulatory environment that is open to technology providers and innovators.

The CLSB has previously engaged with these challenges. In 2022, it published a report funded by the Regulator's Pioneer Fund (RPF) entitled "[How can Costs Lawyers help to control legal costs?](#)"<sup>9</sup>. This report explored how Costs advisers (both regulated and unregulated) might be able to help drive down the costs of legal services and what barriers exist to innovation in this area.

The RPF report found that levels of technology innovation among Costs Lawyers were low, due partly to the nature of the work that most Costs Lawyers are doing and partly to the structures through which they provide their services. The report also found that only a very small proportion of Costs Lawyers appeared to be engaged in consumer facing activity. How the CLSB is to respond to the LSB's guidance now will therefore depend on:

- The extent to which the work that Costs Lawyers do has been affected by technological developments since 2022, or appears likely to be affected in future and
- Whether there is evidence of any growth in the use of technology to support consumer facing activity by Costs Lawyers or Costs Law firms

These questions are addressed in this report, alongside evidence of how Costs Lawyers and the wider Costs sector are currently deploying technology, the opportunities they see for its wider use in future, and the barriers and risks that might

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<sup>7</sup> [Technology and innovation guidance, Legal Services Board](#)

<sup>8</sup> Ibid

<sup>9</sup> <https://clsb.info/regulatory-matters/data-about-costs-lawyers/how-could-costs-lawyers-reduce-the-costs-of-legal-services/>

slow down its adoption. The report concludes with some reflections on what this might mean for the CLSB.

## Note on methodology

This report focuses on the community of regulated Costs Lawyers registered with the CLSB but also draws on evidence of use by the unregulated Costs sector, as a counterpoint, in particular to help answer the question of whether regulation has a role to play in speeding up or slowing down the take-up of technology in the sector.

The organisation that a Costs Lawyer works for, and the role that they are playing in it, are also key factors in understanding this very particular sector of the wider legal market. We distinguish in this report between Costs Lawyers who are working in SRA regulated entities and Costs Lawyers in Costs law firms.

There is no formal definition of a Costs law firm, since this an unregulated entity, but we use this terminology to distinguish between those non-SRA regulated firms where there is at least one regulated Costs Lawyer in the ownership, and organisations of unregulated individuals running a firm dealing with Costs. There are, of course, also individual Costs Lawyers and costs draftsmen who operate as sole practitioners and they are also covered in this study.

The data that is used in this report was collected through a survey that was conducted between May 24 and June 11 2024. The survey received 145 responses (of which 126 were from qualified Costs Lawyers, 14 from Costs draftsmen, and 5 from trainees or others). This gives a 95% degree of confidence that the results obtained are representative of Costs Lawyers in general. There was however a slight overrepresentation in the responses of Costs Lawyers working in SRA regulated firms and an underrepresentation of those working in Costs law firms when compared to the statistics in the 2022 RPF report<sup>10</sup> (48% of survey respondents were employed in SRA regulated firms compared to 42% in the RPF and 33% of survey respondents were working in Costs Law firms compared to 44% in the RPF). This difference may partly be accounted for by shifts in the working environment of Costs Lawyers in the last 2-3 years but is nonetheless important to note. Where it is relevant to the interpretation of Costs Lawyers' responses to the survey, we have distinguished between the views expressed by Costs Lawyers working in Costs law firms and those in SRA regulated firms.

The data obtained from the Costs Lawyers and Technology Survey was supplemented by six interviews with individuals working in a range of working environments representative of the Costs Lawyer profession and in organisations of varying sizes. These individuals were amongst a number of respondents to the survey

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<sup>10</sup> Based on the CLSB register at the end of 2021

who expressed an interest in contributing in more detail. They were selected from the wider pool of survey respondents interested in contributing further, because they represented a cross-section of the different roles and organisations within which Costs Lawyers work. The interviewees could be categorised by type, as follows:

- Owner of a growing and innovative costs law firm,
- Costs law firm owner and sole practitioner undertaking legal aid work,
- Employee in the costs department of a regional solicitors firm,
- Costs draftsman team leader in a top 100 SRA regulated firm specialising in litigation and costs,
- Costs lawyer in an innovative and “disruptive” SRA regulated firm,
- Costs lawyer leading an in-house team.

Given the very small number of interviews, these were used principally to enrich and further interrogate the data obtained in the survey.

# How might recent technological change affect Costs Lawyers?

The legal sector is increasingly being shaped by new technologies. Those which are having the biggest influence include the following:



**Core tools:** There is an increasing range of off-the-shelf software now available to lawyers. These include tools designed specifically for legal sector use, such as legal matter management or case management software and contract generation tools, as well as general business software. The latter, which include: Client portals, online billing and accounts packages, e-signature tools, video-calling technologies and simple website building tools can also be used to improve legal business efficiency<sup>11</sup>. The LSB's 2022 Technology and Innovation Survey investigated in depth how different types of solicitor firms and barristers were using these tools. These tools are mostly affordable and easily accessible. They are therefore most likely to be the starting point into technology for most Costs Lawyers.



**Cloud technology:** Although the use of the cloud for accessing software and storage is now mainstream, surprisingly the LSB found that less than fifty percent of SME firms regulated by one of the legal regulators, were using the cloud.

In future, more computing power will be provided through the cloud, rather than through traditional servers. This means that much increased computing capability will be accessible to even the smallest organisation. AI technologies will become cheaper and it will become easier to build bespoke use cases. This should make it easier for Costs Lawyers to access the power of AI and use it to make their services more competitive.



**Generative Artificial Intelligence:** Tools such as ChatGPT which are based on generative AI Large Language Models (LLMs) are changing the way legal professionals approach tasks such as drafting and research. LLMs can help to generate text, images, other forms of content and even simulate human responses in conversations (chatbots). The largest law firms have been experimenting in building their own bespoke applications for some time, but off the shelf software is now becoming more widely available for drafting and contract analysis. Many law firms are also now using chatbots to deal with initial enquiries<sup>12</sup>. We would expect the traditional role of Costs Lawyers as

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<sup>11</sup> [LSB Technology and Innovation Survey 2022](#)

<sup>12</sup> [Ibid](#)

B2B lawyers, combined with the relatively small size of the profession, to influence the pace and degree of adoption of such tools within the Costs Lawyer profession. Costs Lawyers tend to be “takers” in relation to technology and the pace of adoption will tend to be affected by the pace at which their clients have adopted AI or are willing to facilitate its use (e.g. through electronic files, case management systems and discipline around data recording).



**Predictive AI:** Other forms of AI, drawing on big data and statistical information, are being used in the legal sector<sup>13</sup> for predicting likely case outcomes and have potentially interesting applications in predicting costs and costs outcomes. Given the nature of Costs activities, we would expect predictive AI to play a growing role in the Costs profession over time. However, the small scale of most Costs firms presents several challenges that make widespread adoption less likely outside of Costs departments in the largest firms. These challenges include the significant costs associated with implementing predictive AI, the large datasets and substantial training required for its effective use, and the limited resources smaller firms may have to invest in such advanced technology.



**Blockchain:** Blockchain developments have been overshadowed over the past eighteen months by advances in AI but nonetheless also contain important transformative potential for the legal sector. They are likely to play a fundamental role in automation of tasks in the legal services sector in future. For example, smart contracts (based on the blockchain) can automate insurance payouts reducing the number of potential claims disputes. There is therefore potential for its increased use to reduce the need for Costs Lawyers in future.



**Metaverse:** Although the adoption of the Metaverse has not lived up to its initial hype, this technology still offers valuable use cases in the legal sector, such as in training, simulations, virtual chatrooms, and virtual courtrooms. The potential of the Metaverse for Costs Lawyers might lie in its ability to enhance remote collaboration, provide immersive training environments, and facilitate complex case simulations that could improve their practice. As the technology becomes more accessible, it could become more useful in a business environment in future, and hence to Costs Lawyers for use with clients and even in hearings.

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<sup>13</sup> <https://www.lse.ac.uk/law/Assets/Documents/news/AI-in-Law-the-Legal-Profession-Industry-Insights-Report.pdf>

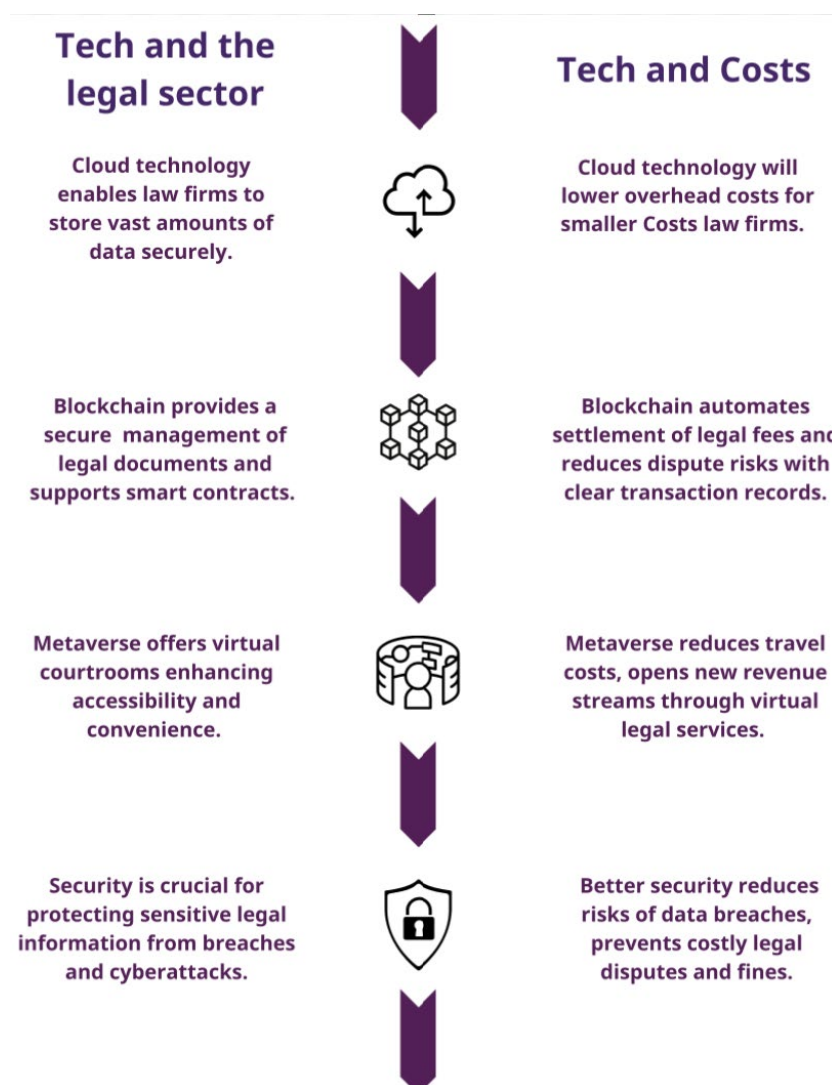




**Cybersecurity:** Cyber and information security technologies are already critical to the legal sector and are required to secure the levels of trust needed for effective client communication. Costs Lawyers are exposed to similar hacking, phishing etc. risks as others in the legal sector and therefore need to be well versed in this area of technology.

Figure 1 summarises how these technologies apply in the legal sector and, more specifically, in the Costs sector.

**Figure 1: Technology and the Legal Sector, Technology and Costs**



Further down the road there are newer technologies, such as quantum computing<sup>14</sup>, which may have even more transformative effects for the legal sector and for Costs Lawyers. The significantly enhanced processing capacity of quantum computers will enable the development of programmes able to undertake the most sophisticated tasks. As these have not yet reached the stage of commercial dissemination, we have focused our attention on investigating how the costs sector is engaging with those technologies shown in figure 1, above.

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<sup>14</sup> Quantum computing overcomes the processing limits of traditional computers which process in binary “bits” with every observation only able to take a value of 0 or 1. In contrast quantum computing is carried out by processing in Qubits, which can hold infinite possibilities between 0 and 1, allowing computers to be significantly more powerful and faster.

## What might be driving current technology use in the Costs Market?

There are various factors that appear to be driving current use and take-up of technology in the costs sector:

- The COVID pandemic has clearly had a major transformative effect. All of our interviewees had observed a major shift to paperless communications and video conferencing.

*“So, the market's changed 100% ... ten years ago and probably up to about five years ago... we were getting boxes and boxes of paper files... We rarely get a paper file nowadays.”*

*Costs Lawyer in Costs Law Firm*

- The use of case management systems by solicitors in their role as both clients and employers of Costs Lawyers as a factor contributing to more technology take-up, was cited in both the survey and interviews. The use of such systems now appears to be more widespread across the legal sector<sup>15</sup>. This increases the potential for increased transparency and fewer solicitor costs disputes, resolved more quickly.

*“Solicitors ... appear more clued up now (on costs) ...a lot of them are using case management systems and therefore they have a perception as to the cost potential of a case because of the time recording,”*

*Costs Lawyer in Costs law firm*

- The public is also becoming more informed about costs thanks to the publicity around high-profile celebrity cases, such as the Rooney-Vardy case and the withdrawal of litigation against News International by Hugh Grant, as well as the wider availability of information on the Internet. This is a development even in comparison to the findings of the RPF report in 2022.

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<sup>15</sup> This may also be true of others who instruct Costs Lawyers but no explicit evidence of this was presented in the research gathered for this report.

On the other hand, factors that might have been expected to move the costs market more firmly in the direction of technology adoption are not yet having the anticipated effect.

The extension of the fixed costs regime does appear to be driving greater use of technology amongst those Costs Lawyers engaged in low-margin, volume work, given that the use of case management systems and billing software is essential to the viability of this kind of work. But the extension of the fixed costs regime has not yet had a widespread influence in the sector. This topic was also cited by most of our interviewees as one of the most critical factors likely to shape the take-up of more sophisticated forms of technology in future.

The digitisation of the courts has also not yet had the impact that might have been expected. Over 70% of our survey respondents reported that court use of IT had either had no impact or only a slight impact on their work as a Costs Lawyer. This is largely due to differing levels of enthusiasm amongst the judiciary for the use of e-bundles, for example, and inadequate infrastructure in the courts themselves to support the roll-out of more technology.

The technological environment in which Costs Lawyers operate is changing, albeit slowly. The next section will look in more depth at how the costs sector is responding to these changes.

*“The percentage of litigant-in-person enquiries (we receive) has gone up significantly (in recent years). And whereas five years ago, I used to get a bit work from the CAB in the Royal Courts of Justice, now I am getting people actually calling me up. They found me on the ACL website or on my website and they understand what our role is in the industry and how we can benefit them and how we can help them in terms of adverse costs or, or cost entitlements”.*

*Costs Lawyer in Costs Law Firm*

**70% of Costs Lawyers think that the digitization of the courts has had no, or only minimal impact on their work so far**

## How are Costs Lawyers currently using new technologies?

For the CLSB, the starting point for considering how it might shape its regulatory framework to support innovation, is understanding how Costs Lawyers are currently using technology.

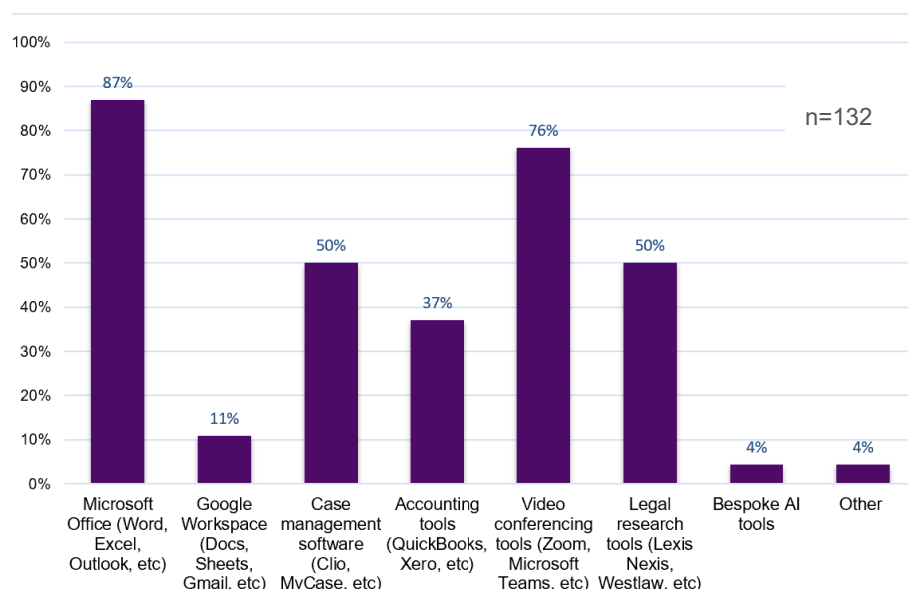
### What kinds of technology are Costs Lawyers currently using?

Our survey asked respondents in the costs sector about the technologies they are currently using for their work. Figure 2 illustrates the overall results, which suggest that:

- Industry standard software (e.g. Microsoft) is fairly universal, which means that most of the Costs sector will be using cloud storage and processing, whether consciously, or not.
- The costs sector is well-equipped for remote working, with over 80% of respondents using this capability.

The other forms of technology identified in figure 2 were used to varying degrees, depending on the type of organisation through which Costs Lawyers stated they were operating. These differences are described in more depth in figure 3.

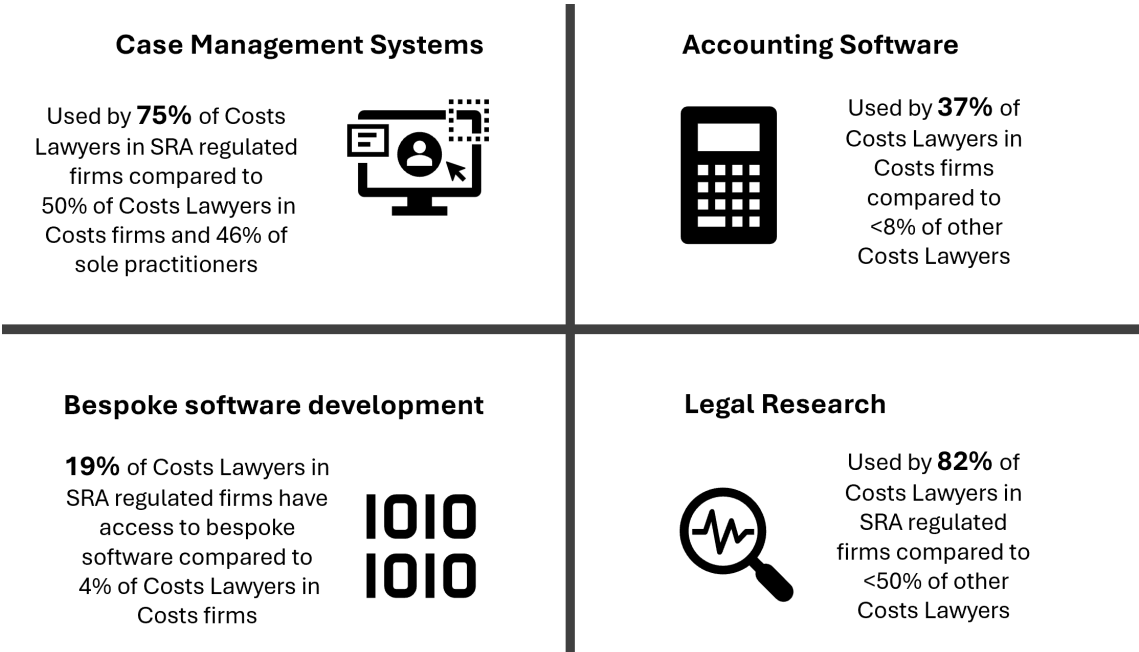
**Figure 2: What types of software and technologies do you currently use in your work?**



*Source: Survey on Technology and AI in the costs law profession*

The most striking differences in technology use between different types of organisations are shown below in figure 3.

**Figure 3: Differing degrees of access to technology tools across the Costs sector**



Source: Survey on Technology and AI in the Costs law profession

Figure 3 shows that Costs Lawyers in SRA regulated firms benefit from access to the wider suite of technology tools that are available in their employing firms. Significantly higher proportions of Costs Lawyers working in these firms have access to case management software, legal research tools and bespoke software tools compared to their counterparts in costs law firms or Costs Lawyers working as sole practitioners. However, Costs Lawyers in costs law firms are, however, nearly twice as likely again, compared to sole practitioners, to have access to case management tools.

This differences in access to technology tools may become more relevant over time. At present, Costs Lawyers are more mobile in employment terms than their solicitor counterparts appear to be. A comparison between the organisations Costs Lawyers are connected to in different practising certificate years, obtained from the CLSB register, suggests that individuals can move between costs law firms and regulated SRA firms without difficulty. But if the ability to use particular tools becomes an essential skill for Costs Lawyers in certain settings in future, then this could possibly reduce mobility in the sector. For the time being, however, we were told by

interviewees that costs knowledge and skills were far more important than technology knowledge as hiring criteria, although the latter could be a helpful deciding factor if two candidates for a position were otherwise equally matched.

Case and client management software, such as LEAP, CLIO, FilePro, and ProLaw, are heavily used in SRA regulated firms and, in theory at least, the greater use of these tools by their instructing lawyers should make it easier for Costs Lawyers to automate their own processes and prepare cost assessments more efficiently. Costs Lawyers working in costs law firms told us, however, that the lack of standardisation across case management software, both in terms of how such packages work and in terms of how they are used by solicitors, means that Costs Lawyers need to undertake a surprising amount of manual intervention to turn the output from such systems into a form that could then be used by specialist costs software. All our interviewees mentioned time-consuming data entry as an issue.

All our survey respondents used specialist costs software such as CostsMaster, Proclaim or similar, with the vast majority using CostsMaster. The general view from the Costs profession was that a combination of the virtual monopoly position of CostsMaster, coupled with the small market for costs software, had meant little investment or innovation in this area of software, with no development of AI features, in contrast to many other software packages.

## Are Costs Lawyers using AI?

Our survey suggested that although Costs Lawyers in costs law firms were significantly less likely to have used AI applications in their work (48%) compared to Costs Lawyers in SRA regulated firms (62%), Costs Lawyers using AI had experimented with a wider range of applications.

Most of the use of AI by Costs Lawyers in SRA regulated firms was based around the use of AI driven searches and case summaries provided by the likes of Lexis Nexis and Westlaw (44%). Around 16% of respondents from this group had tried ChatGPT or similar generative AI programmes and a handful had access to bespoke software.

In contrast, only 12% of Costs Lawyers in cost law firms had used Lexis Nexis or Westlaw AI. But, on the other hand, 18% of this group had used ChatGPT.

*"Many people don't realise how much they're using AI at the moment because it's just getting embedded in everything that's on offer to us, like Microsoft tools"*

*Costs Lawyer in a large SRA-regulated firm*

*"We trialled getting AI to write case summaries for us... it does seem a little bit like black magic sometimes"*

*Costs Draftsmen in an SRA-regulated firm*

There were also some Costs Lawyers in Costs law firms who reported using various AI-assisted billing or accounting software packages, or software for the management of costs and predictive billing. And there were examples of Costs law firms that were actively trying to engage with technology (see box opposite).

There are a few interesting observations that can be drawn from this:

*"Our firm have always been interested in using technology to better the firm. We used different drafting software, case management tools, and invested in training in Excel. We have dabbled with ChatGPT, but so far, the results have been less than impressive. We continue to do so and will do until we work out how it can be of benefit to us and our clients. We will do the same with other forms of AI"*

*Costs Lawyer in costs law firm*

- Costs Lawyers in larger firms have access to tools and resources that are too expensive for smaller firms to adopt.
- But Costs Lawyers are slightly more likely to have used ChatGPT if they are based in a costs law firm than an SRA regulated firm. This might be explained by restrictions that larger firms have reportedly put on the use of publicly available generative AI tools, given concerns about their output, and the privacy and security of data used in searches.
- There are pockets of experimentation within the costs sector, but they are isolated. Even those Costs Lawyers in larger SRA regulated entities did not appear to be close to making any AI-driven costs specific innovations in their firms.

Overall, the current use of technology amongst Costs Lawyers is typical for the legal sector as a whole<sup>16</sup>, although there are some areas in which the costs sector is ahead of mainstream legal practice, such as the early adoption of specialised billing software, advanced cost budgeting tools, and the use of detailed cost management processes. The next section looks at how Costs Lawyers are expecting to use technology in future and the new opportunities that it might bring.

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<sup>16</sup> When compared, for example, sector averages identified by the LSB's 2023 research

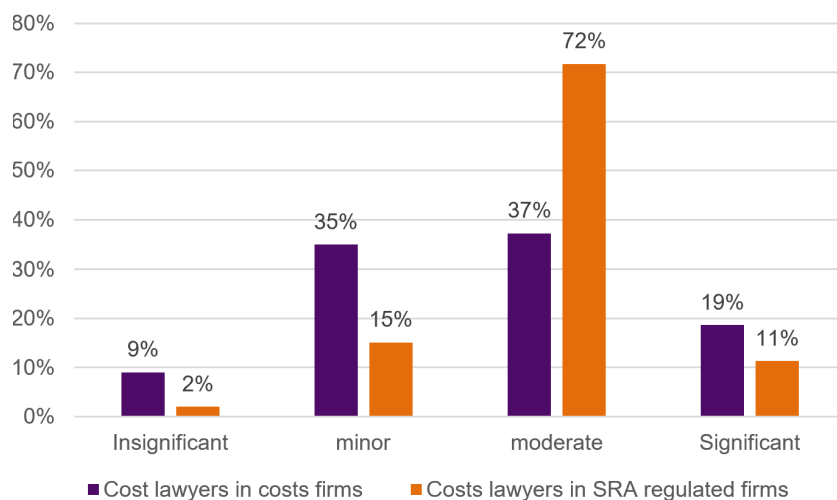


## New opportunities for Costs Lawyers

In our survey, we asked participants in the costs sector about their views about how technology might affect their work in future.

Figure 4 illustrates some important differences between the views of Costs Lawyers operating in different environments.

**Figure 4: What difference do you think new technologies and AI in particular will play in your work within the next five years?**



Source: Survey on Technology and AI in the Costs law profession

Costs Lawyers in Costs law firms are more divided than their counterparts in SRA regulated firms about the potential impact of AI, but the majority of Costs Lawyers overall believe AI will have a moderate to significant impact on their work in future. Where individuals fall on the spectrum of opinion largely depends on the value-added that they perceive their work brings to clients. Those who work in organisations that deal with lower value, high-volume caseloads tend to be more pessimistic than those engaged with a greater degree of complexity.

The following quotes from responses to our survey represent these two different views.

#### *The Pessimistic View*

*"It will, in the not-too-distant future, obliterate the profession. AI will be able to draft bills of costs in a matter of minutes and will be able to predict/value a bill of costs quicker and more accurately than a human. In 10 years', time I doubt there will be 10% the current number of costs professionals."*

*Costs Lawyer in costs law firm, Insurance litigation focus*

#### *The Optimists*

*"Elements of our work can clearly be automated or assisted with AI technology. For those who embrace and develop this there are significant opportunities in terms of generating additional profit."*

*"Hopefully AI will allow me to focus on drafting bills and dealing with assessment and move away from more admin work."*

*Views from Costs Lawyers in SRA regulated firms*

*"I imagine it will largely eradicate the need for traditional "drafters" as AI should be able to pull the information from the file into a presentable format as well as interpret timeline notes into a more user-friendly format. I also expect AI to assist with points of dispute and replies. I do not think these changes will happen overnight and whilst I do think it will reduce the amount of people in costs (especially those without sufficient expertise) but there will always need to be some costs lawyers for a people approach, strategy, project management and to check and tweak the AI!"*

*Costs Lawyer in large regional SRA regulated firm*

Interestingly, the sole practitioners who responded to the survey were more likely than Costs Lawyers working in other types of organisations to state that they did not have enough experience of AI to be able to form a view. This illustrates the importance of exposure to technology as a factor in its adoption.

On balance, the optimists were of the view that AI could strip out a lot of manual data entry and allow Costs Lawyers to focus on areas of real expertise, whilst the pessimists were more likely to be concerned about the ability of clients to recognise and be willing to pay for this expertise. But overall, no one expected change to happen quickly in the costs sector.

### **What might be the opportunities of AI?**

The potential opportunities for Costs Lawyers to use AI in future were ranked by survey respondents. Survey respondents were invited to rank different potential opportunities on a scale of 1-5, with 5 being the most. Costs Lawyers in costs law

firms and those in SRA regulated firms ranked the main potential uses of AI in the same order but those in Costs law firms placed a higher relative rank on some of the more advanced uses (e.g. predictive case outcome or use in legal research) than their counterparts in SRA regulated law firms.

This may reflect the greater availability of early-stage AI modules in legal research tools like Westlaw and Lexis Nexis to organizations with larger budgets, as well as the different roles that Costs Lawyers might perform in various working environments.

Figure 5 illustrates the ranking of the different potential uses of AI, made by Costs Lawyers in Costs firms and Costs Lawyers in SRA regulated firms out of a possible 100%.

**Figure 5: Ranking of potential opportunities for Costs Lawyers to use AI**



Source: Survey on Technology and AI in the Costs law profession

Costs Lawyers views about these opportunities are explored in more detail below.

## Faster document preparation

Faster and more efficient preparation of case documentation was something that many of those expressing positive views about AI felt could deliver the greatest immediate benefit to Costs Lawyers. It is surprising that a significant amount of manual data entry is still taking place in the sector, especially considering the availability of specialist Costs software. This is an area where AI could make a substantial improvement, automating these tasks to increase efficiency and reduce errors. There was no expectation that the dominant market software used for Costs work would be updated to include AI capabilities. This underlines the low level of awareness in the costs market of the rapidly growing accessibility and affordability of AI processing power and the potential to build relatively low-cost, bespoke applications.

*"We export a ledger from a time recording system... into CostsMaster...(then)...all you're really doing with it is editing the descriptions of the work that's been done and making sure... phase and activity codes are attached to it...It's become to a large extent a data processing exercise... with ...people spending 80-90% of the time typing... I've only really become aware of AI in the past couple of years, but it seems like artificial intelligence could do an awful lot of heavy lifting for us."*

*Cost Lawyer in Costs law firm*

## Assistive technology for costs budgeting

The extension of fixed costs presents significant challenges for Costs Lawyers, such as the potential reduction in the scope of work available, as fixed costs limit the ability to negotiate fees based on the complexity or time required for a case.

There may be increased pressure to work more efficiently within these cost constraints, which could lead to a greater emphasis on cost management and a need to adopt new strategies or technologies to maintain profitability. It could help both to triage cases (see box opposite) and to run cases cost-effectively under a fixed Costs regime.

*"I have certainly spoken to some bigger law firms that are already looking at how they can utilise AI, especially in the claims space with fixed costs coming in. ...some firms are using AI to triage work in order to understand, is this a case that's going to be profitable for us to run, or not, under the fixed costs regime?"*

*In-house Costs Lawyer*

## Assistive technology for legal research

One use of AI which some respondents identified as potentially useful, is the ability to harness faster research capabilities.

*"AI is going to help with the time wasted on Westlaw and hunting case law. I'm certain that AI will have that nailed off in 5-10 years"*

*Costs Lawyer in a Costs firm*

## Assistive technology for litigation strategy

Data analytics is transforming the way legal professionals approach cost management. There are clearly opportunities for Costs Lawyers to harness the power of big data to gain strategic insights into billing patterns, resource allocation, and cost recovery processes.

Advanced analytics tools can also help to identify trends and anomalies, helping Costs Lawyers to make more informed decisions and recommendations about costs strategy, for example.

The views expressed through our survey and in interviews suggested that parts of the sector do have access to the data that would enable AI to assist with decision-making, but do not yet have the ability to exploit it.

*"I have a big suite of data... when we get bills, we record all the data on the system. So, I know what our average reductions are with certain firms and solicitors and also what our average reductions are with certain judges, and in certain courts... If you input that data into a machine, you're going to get a likely scenario that says... with this firm, this type of injury, this length of time until settlement, costs could be in the region of this bracket. There's no reason why an AI software can't come up with that. However, you will still need people to sense check the result."*

*In-house Costs Lawyer, Insurer*

Costs Lawyers' views of the opportunities that new technologies might offer them were also notable for what they did not include. Only one interviewee mentioned the possibilities that more client facing software such as chatbots might offer. There was also little or no awareness of the other technologies that might affect the legal sector and the Costs sector as a consequence, such as blockchain or quantum computing.

When asked about plans to increase the use of technology in their work, there were also some noticeable differences between Costs Lawyers depending on the environment in which they were working. In larger firms or corporate settings, for example, Costs Lawyers were more likely to report plans to adopt advanced billing software, AI-driven research tools, and automation technologies. In contrast, Costs Lawyers in smaller firms or independent practices often cited budget constraints and a focus on maintaining traditional methods, resulting in a slower rate of technological adoption. Overall, though, although both Costs Lawyers in solicitor firms and those in Costs firms expected on average to increase their use of technology it is nonetheless striking that around a third of Costs Lawyers answered "no" to this question.

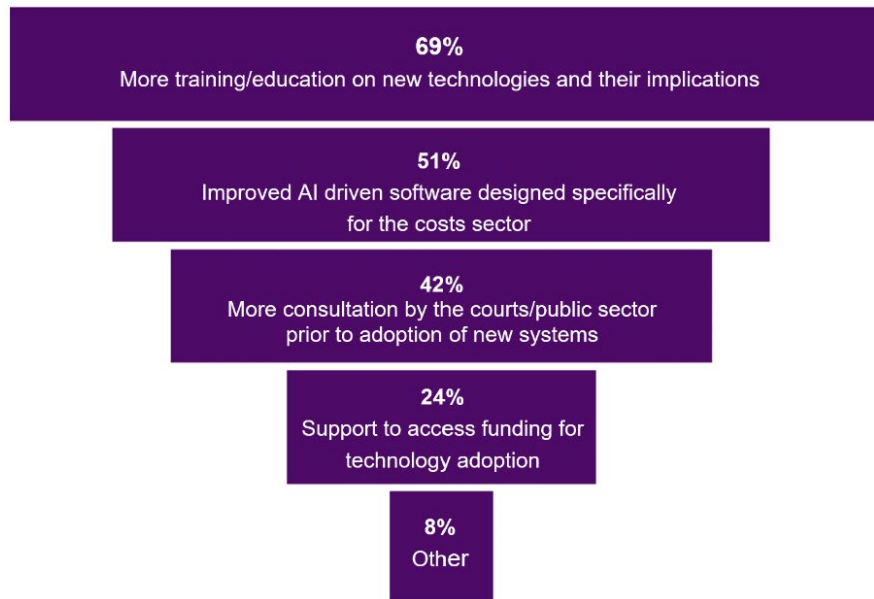
**Figure 6: Are you planning to or would you like to increase the use of technology in your Costs work in future?**



Source: Source: Survey on Technology and AI in the Costs law profession

The reason such a large proportion of Costs Lawyers in costs firms are undecided about the take-up of new technologies may be partly explained by the low levels of understanding of such technologies acknowledged in our survey. Education and training was identified as the activity that would assist future take-up to the greatest extent, followed by software designed for use in the sector and better consultation from the courts etc as they digitise.

**Figure 7: What would help?**



Source: Source: Survey on Technology and AI in the costs law profession

Overall, there was a general sense from many respondents and interviewees that AI and other new technologies would offer opportunities, as they would help to free up Costs Lawyers from repetitive, low value work and enable them to concentrate on higher-value strategic advisory activities.

## Barriers to the take-up of new technology faced by Costs Lawyers

Costs Lawyers are not alone in their cautious approach to AI. The previously cited research by the LSB has suggested that technology use among lawyers in general was not particularly advanced.

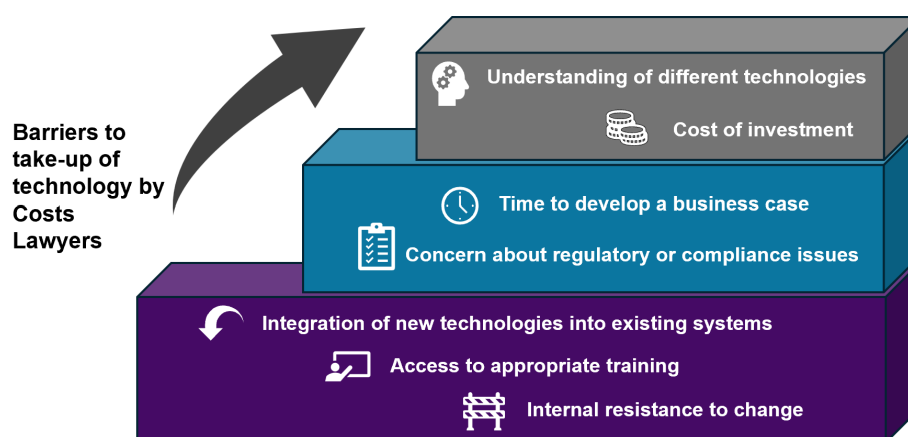
An immediate task for regulators like the CLSB is therefore to understand what might be deterring their regulated communities from adopting new technologies.

Given that the opportunities for using new technologies, and AI in particular, seem promising in the costs sector, the CLSB needs to understand the internal and external factors that might be preventing Costs Lawyers and Costs law firms from fully embracing technological innovations.

### What do Costs Lawyers think are the barriers to adopting technology?

Our survey of Costs Lawyers identified seven principal obstacles to their take-up and use of modern technologies and these are ranked in figure 8 below, according to the frequency with which they were mentioned by survey respondents.

**Figure 8: Barriers to take-up and use of technology among Costs Lawyers**



Source: Survey on Technology and AI in the costs law profession

Many of these factors are driven by the nature of the costs sector, in which costs law firms and even costs departments in larger solicitors' firms are small operations. Many of the barriers in the Costs sector are therefore not very different to those facing smaller solicitors' firms.





## ***Lack of knowledge and awareness of technologies***

The most significant barrier to adoption of new technologies among Cost Lawyers is undoubtedly a lack of confidence in their understanding of what AI and other innovations can offer now and in the future. However, this is inextricably linked to the fact that Costs Lawyers are “takers” rather than “makers” of technology development, given the size of the costs sector and its role in the market as part of the B2B supply chain.

Costs Lawyers are also dependent on how their client base is using and adopting technology. The evidence which emerged from the survey and particularly through interviews, suggests that solicitors are often not using their own case management systems in ways that would allow Costs Lawyers to use AI effectively.

The costs law sector also suffers from the fact that the focus of cutting-edge investment into the legal sector has been in language-based tasks such as drafting and legal research in recent years. Where predictive AI has been used, for example, in litigation, this has been driven by organisations with large internal datasets and has not yet achieved the kind of mainstream use of e.g. a ChatGPT. This has undoubtedly coloured the awareness that Costs Lawyers have of what AI and other new technologies could do for the costs sector.

But it is equally the case that, even if Costs Lawyers were in a position to articulate the demand for the adaptation of modern technologies to particular costs sector use cases, the market for costs specific software development is so small that significant innovation that is targeted on the sector seems unlikely in the near future.

*“Technology works if everyone using it is trained and makes the entries in a uniform manner.*

*Due to the vast number of different systems and a complete lack of uniformity between fee earners in the same firm, let alone between firms, it is going to be many years if ever that this becomes usable and reliable”*

*“(The technology) ...is only as good as the data you put in... When the data's not been put in correctly, then it doesn't matter what machine you use, it's going to be wrong because it's the data's wrong”.*

*Costs Lawyers in costs law firms*



## ***Time and resource constraints***

Smaller firms in all sectors tend to lack the financial and human resources required to invest in emerging technologies. The costs associated with identifying a need, building a business case, purchasing, implementing, and maintaining advanced technology can be prohibitive for such firms.

Around half of all survey respondents (47%) reported time constraints as a significant barrier to adoption of new technologies. Costs Lawyers often deal with heavy caseloads and tight deadlines, leaving little room for exploring and implementing new technologies. The initial phase of technology adoption, which includes research, testing and training is particularly time-consuming and can easily be put-off in favour of more urgent case-driven priorities.

For most Costs Lawyers, who are using combinations of case management and specific costs software, strung together with manual intervention, there is also the challenge of how to integrate new applications into their legacy systems.

In our survey, 56% of respondents cited the cost of investing in technology as a barrier, while 40% indicated that integrating newer technologies into their legacy or older systems was also a challenge. Most Costs law firms are small and operate on tight budgets and even where Costs Lawyers are working in larger organisations, their activities are rarely at the top of the list of priorities for internal ICT investment.

These factors therefore compound the effect of the barrier identified above – without compelling applications for Costs Lawyers, the incentive to spend time and money on more general innovation is diminished.



## ***Training***

The lack of appropriate training in new technologies and the skills required to adopt them (building business cases etc), were cited by around 70% of survey respondents. Without adequate training in what technologies can do, and an understanding of how to utilize new tools effectively, Costs Lawyers are unlikely to integrate them into their practice.

Although there are many free or low-cost information sources and training programmes available on the Internet, these have not yet been tailored for use in the legal sector, let alone in the costs sector.



### ***Concern over regulatory or compliance implications***

Concerns about compliance issues were mentioned as a potential barrier by both Costs Lawyers (48%) and costs draftsmen (33%) responding to our survey. Not surprisingly, regulation and compliance were ranked as a much greater potential concern by Costs Lawyers compared to costs draftsmen. This suggests two things:

- Firstly, there are broad and well-known issues around AI hallucinations, and data protection which we would expect any individual working in the legal sector to be aware of, regardless of whether their role was regulated.
- But there are also concerns of which regulated Costs Lawyers are much more aware. These arise from the particularly complex regulatory environment facing many Costs Lawyers. Many Costs Lawyers are business owners with the general compliance issues that this role raises, but plenty of others work in SRA-regulated firms and must therefore also be conscious of the SRA Handbook. There are also quite a few Costs Lawyers who are dual qualified and who carry the obligations of their solicitor or Chartered Legal Executive title as well.

Most of our interviewees felt that more guidance from their regulators would be helpful to provide reassurance about what the ethical use of technology might look like and the issues of which their regulator would expect them to be conscious.

Although there was little evidence emerging from our survey of any direct consumer facing technology activity in the Costs sector, there were indications that there is potential for this area to grow in future (e.g. as a result of the increasing number of Litigants in Person and greater reported awareness amongst consumers of the issue of Costs, thanks to high profile cases where legal costs had been a particular issue). This potential will, however, only be realised, if there is a much higher level of comfort amongst regulated individuals of what their regulatory obligations might be when dealing with consumers via technology, and greater clarity about the risks of getting it wrong, both from the regulator's perspective and that of the client.



## Internal resistance to change

Around 40% of Costs Lawyers identified internal resistance to change as a barrier to the adoption of technology; a much higher proportion than amongst costs draftsmen (16% cited this as a barrier). This may be explained by the fact that most costs draftsmen responding to our survey were employees and less directly exposed to organisation level discussions about investment priorities.

There was also a stark distinction between the resistance to AI adoption felt by Costs Lawyers working in solicitors' firms (51% citing this as a barrier) compared to those working in costs law firms (33%). This is interesting when set alongside the finding that 82% of Costs Lawyers working in solicitors' firms expected new technologies to have at least a moderate impact on their work within the next five years, compared to only 56% of Costs Lawyers working in costs law firms. The gap between these perceptions suggests that those working in costs departments in solicitors' firms can more readily see the transformative potential of investment but equally feel that they face a more uphill battle in getting prioritised for investment.

Costs Lawyers working in Costs law firms are also more exposed to resistance to change elsewhere in the sector. The lack of consistency in use of case management systems by solicitors, lack of common and coherent definitions used in the industry to underpin data and lack of drive from the courts were all mentioned by our interviewees.

*"Lawyers as a whole... quite a lot of them are resistant to change. It's like, 'I've got this system, it works. It's been fine for 25 years. Why do I need to change?'"*

*Costs Lawyer in an SRA-regulated firm*

*"One of the issues we have is ... that there's no real drive from anybody else ...the courts didn't even want electronic bills. ...I think sometimes funding is an issue because you need two screens really to navigate an electronic bill. There's only one courtroom in the SCCO that had two screens when the electronic bill first came out and certainly the provincial courts didn't have the technology set up to make it easy for them.*

*So you can almost understand why some judges like things in paper still, but it's a matter of having the tools and the appetite, so it is probably a combination of both of them."*

*Costs Lawyer in Costs law firm*

Overall, these various barriers can be grouped into those which are largely driven by internal organisational considerations (time and resource constraints, lack of training, and resistance to change) and those driven by external factors such as the absence of costs sector specific technology products, regulatory concerns and slow-take up of technology by clients or other relevant stakeholders, such as the courts. This distinction is relevant as it will have a bearing on what can be done to overcome or mitigate the effect of such barriers.

## Emerging risks to the Costs sector from technology and Artificial Intelligence

As the legal sector increasingly adopts new technologies and integrates artificial intelligence (AI) into its operations, there is growing awareness of the potential risks that accompany these developments.

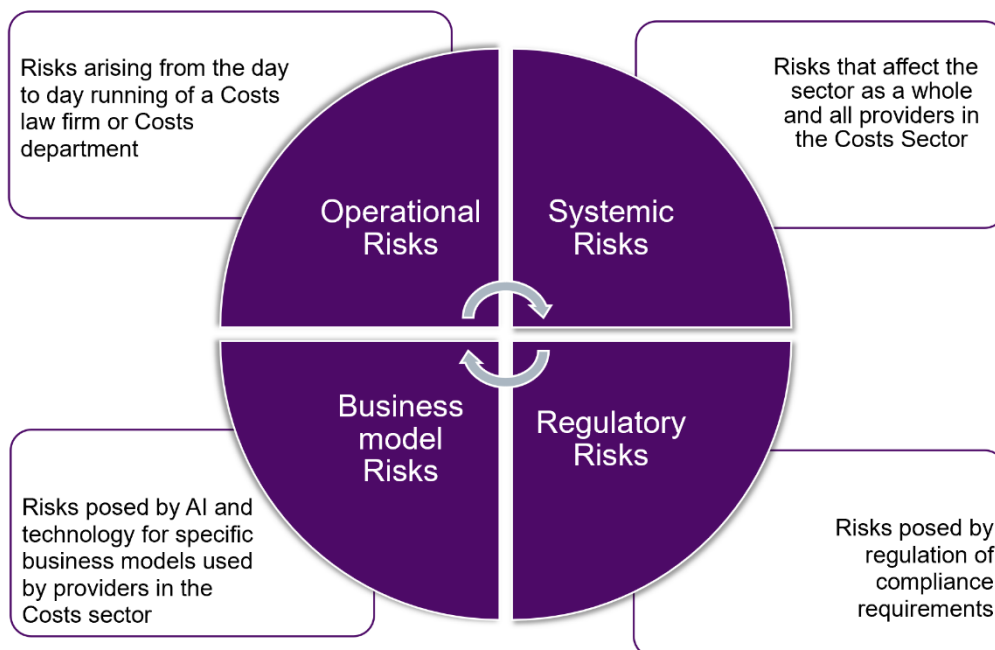
The costs sector is naturally vulnerable to most of the risks that the wider legal sector is facing, but also faces some specific risks of its own.

This section explores these risks, drawing on both the results of our survey but also on risks that have been identified elsewhere for the legal sector that will be relevant.

These risks are categorised into four types:

- Systemic risks,
- Business model risks,
- Operational risks and
- Regulatory risks.

**Figure 9: A technology risk model for the costs sector**



Source: Survey on Technology and AI in the costs law profession

Understanding and mitigating these risks will be crucial for Costs Lawyers but it will also be important for the CLSB to understand how it might help to support Costs Lawyers in their technology journey and ensure a stronger costs sector better equipped to address consumer needs in the medium term.



## Systemic risk

The systemic risk of technology is a factor that has been widely flagged to the legal sector for some time, although the apocalyptic picture painted for traditional law firms in Richard Susskind's 2008 book "The End of Lawyers", has more recently been replaced by a less threatening vision<sup>17</sup> in which lawyers are assisted by technology rather than replaced by it.

These two visions are also relevant to the costs sector. As already flagged in this report, there are fears in some quarters that the rapid development and adoption of AI-driven legal tools could lead to automation of many of the tasks traditionally performed by Costs Lawyers.

On the other hand, there was a common view expressed through the survey and interviews, that the level of complexity and bespoke nature of many costs cases would make AI applications challenging to use. Indeed, more than one interlocutor (see opposite) expressed the view that relying on AI might pose a bigger systemic risk to the costs profession than not using it at all.

*"AI will be seen as a quick fix to replace costs lawyers. Most firms who adopt it will have inadequate data sets for training meaning those who use AI in tandem with traditional skills will stand out from those who rely on AI alone."*

*Costs Lawyer in costs law firm*

*"I consider AI like all up-and-coming technologies may be useful in a range of areas of costs work. But at the end of the day, so much of what we do is so tailored and bespoke, it will be difficult for AI to grasp a lot of the nuance. For example, items of work/approaches we know judges/the court disapprove of, but have not been recorded anywhere or in any format that would allow AI to digest."*

*Costs Lawyer in costs law firm*

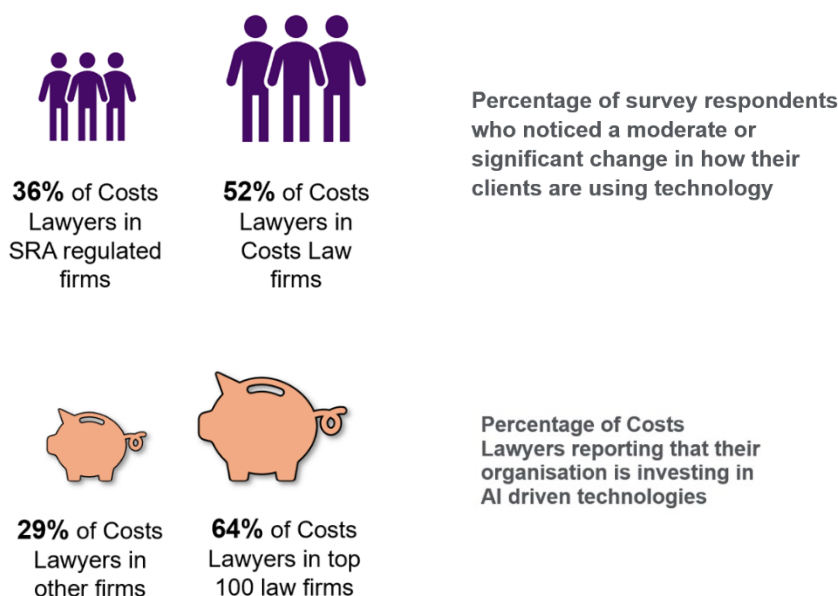
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<sup>17</sup> As set out in R Susskind, *Tomorrow's lawyers: An Introduction to Your Future* (2013) Oxford University Press, Oxford



## Business model risks

Business model risks are those risks that relate to the form of organisation through which Costs Lawyers are operating and the client base to which they are marketing their services. Our survey suggests that business model risks may impact unevenly within the costs sector.



There is a noticeable difference in the view that Costs Lawyers in costs law firms and those in SRA regulated firms have of how their clients are using technology.

Our interviews suggested that the main change that Costs Lawyers in costs law firms had noticed in their clients, was a move to the use of digital files and case management systems, away from paper time recording and information transfer. These changes seem to have been particularly noticeable only in the last five years, suggesting that a basis for using more AI may now be emerging. However, as noted previously, Costs Lawyers in costs law firms were sceptical of the immediate benefits likely to emerge from AI given that case management systems were being used in very different ways and there was no standardisation of data definitions across the sector. Client use of technology is a bigger risk for Costs Lawyers in Costs law firms compared to those in SRA regulated firms, as the former are less likely to be able to dictate what systems are to be used and how they should be used.



The survey also flagged another area of business risk, as 64% of Costs Lawyers in top 100 law firms reported that their organizations are investing in AI applications, compared to only 29% in other firms. This disparity highlights the risk that smaller firms may find themselves increasingly at risk of competition from AI-driven substitutes.

*“(AI is) ...likely to reduce number employed. Sole practitioners and small practices will not be able to afford to invest in the technology”*

*Costs Lawyer in costs law firm*



### Operational risk

The operational risks posed by AI and other technologies are the potential disruptions and challenges that they may create for current day-to-day business.

The greatest area of potential risk in this category comes from cyber and information security weaknesses. There are growing threats to all businesses of data breaches and hacking, and for those operating in the legal sector this is a particular concern for sensitive client information. Information and cyber security risks are increasingly flagged amongst the top technology concerns for the legal sector in general, but were surprisingly, not raised in our survey. Although costs law firms may to some extent be protected from the cybersecurity issues that have affected law firms because of their supplier role in the legal sector supply chain, this is a concern for the profession in future.

The risk that the technology available in the costs sector is lagging behind client expectations was flagged by at least one survey respondent. The assumption amongst firms/the courts appears to be that technology can instantaneously produce electronic bundles for costs assessment, whilst this is not the case. The risk for Costs Lawyers is that as this gap between perception and reality grows, billable time is lost as they attempt to cover up the shortcomings of the available technology.

*“Technology is useful but creates unintended consequences. An example is the need to produce full files of papers for assessment hearings in a way which assists the court and allows for speedy review. Case/document management systems are not built with assessments in mind, and it can take hundreds of hours to produce useful bundles, yet only a fraction of this time is either claimed (for fear of showing opponents how time consuming it is to support bills) or allowed by costs judges.”*

*Costs Lawyer in SRA regulated firm*

Another operational issue that was raised in our survey was the training for new Costs Lawyers. Although this was identified as a major risk, it was on the radar for Costs law firms in particular, who expressed concern that the increasing use of AI could reduce opportunities to



introduce new Costs Lawyers to entry level work. Although this is here classified as an operational risk, it is also a risk for the CLSB.

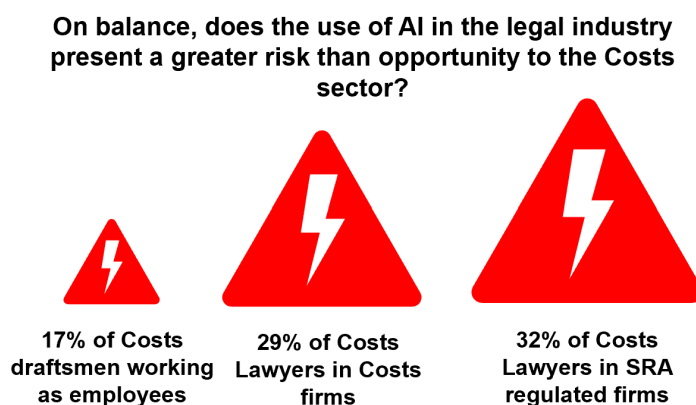


## Regulatory risks

Regulatory and compliance risks connected with the greater use of AI and other new technologies are often identified as a major concern for the legal sector. Common issues raised include: how AI applications arrive at their conclusions, the quality of training data used and risks of imported bias, the possibility of AI hallucinations in LLMs, and the risks to client confidentiality when using open-source AI software.

Our survey indicates that, unsurprisingly, the unregulated sector is less concerned about the perceived regulatory and compliance risks of AI in comparison to the regulated sector.

Around 40% of Costs Lawyers and 50% of costs draftsmen responding to the survey were still undecided as to the relative benefits, or otherwise, of AI on the costs sector. But where they did feel able to express a view, it would appear that the perception of risk correlates with the complexity of the regulatory framework that applies to individuals.



*Source: Survey on Technology and AI in the Costs law profession*

Costs Lawyers working in Costs law firms were significantly more concerned than costs draftsmen about the potential risks of AI, whilst Costs Lawyers working in SRA regulated firms were marginally more concerned than their counterparts in costs law firms.

This suggests that the sense of potential risk may be related, at least in part, to the existence of regulatory obligations. No specific regulatory obligations were identified as contributors to the perception of risk, either by survey respondents or in our interviews, which suggests that the issue is, rather, uncertainty about the ethical implications of using any AI technologies in practice. For those operating in organisations where there are different ethical codes at work, this uncertainty is increased by the concern of potentially conflicting obligations.

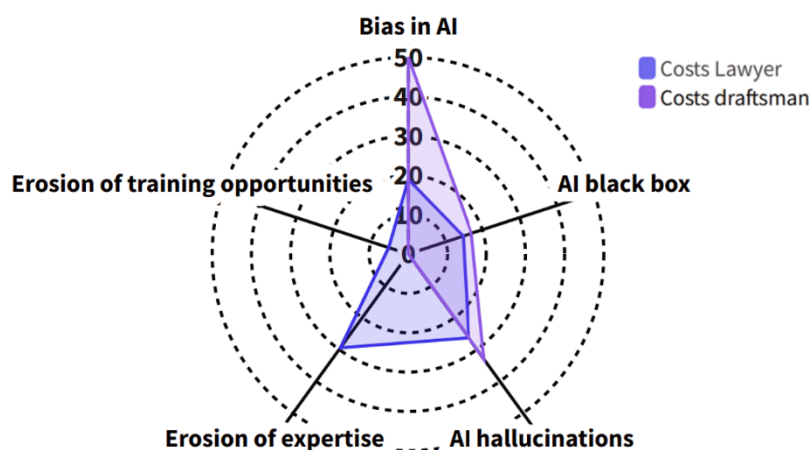
*“Any time saved in generating the documents is lost with the need to double-check the output for hallucinations and general inaccuracy.”*

*Costs Lawyer in SRA regulated firm*

### How do the views of Costs Lawyers differ from those of costs draftsmen?

There were also some interesting differences of view expressed by Costs Lawyers when compared to costs draftsmen about the nature of the risks that most concerned them.

**Figure 10: Percentage of survey respondents citing specific risks at their top concerns**



Source: Survey on Technology and AI in the costs law profession

As figure 10 shows, costs draftsmen identified fewer areas of concern with AI than Costs Lawyers and tended to cite those that are most commented on in publicly available articles. The potential for inbuilt bias in AI systems was overwhelmingly their main concern, followed by AI hallucinations.

Costs Lawyers responding to our survey shared the same general concerns as costs draftsmen but cited two additional concerns. These were the risk that the value of

costs expertise would be undermined by the greater use of AI technologies and that greater use of AI would reduce training opportunities for new Costs Lawyers.

### What role for the CLSB?

None of our survey respondents or interviewees identified any specific issues with the CLSB's regulatory approach or with the code of conduct, which might dissuade Costs Lawyers from taking up technology. But a few interlocutors with greater experience of technology did suggest that there was a positive role for the CLSB to play in preparing the sector for the greater use of technology. This role is explored in more detail in the later section on recommendations emerging from this study, but the most important role is to help Costs Lawyers understand in more detail the areas of technology use with which they need to take most care.

*"I think they (the CLSB) need to be involved because at the moment they're looking the conduct of an individual as a Costs Lawyer.*

*But this changes as soon as you start digitalising things. If you're a Costs Lawyer overseeing a costs claim, despite the fact it might be automated, at some point you might still have to go on the record ...so you have got a degree of responsibility... Then there are more risks of data protection incidents, there are more risks of data not being used correctly. There are more risks of potential mis-certification of a bill because you're relying on technology to do something for you that you've not actually seen for yourself".*

*Costs Lawyer in costs law firm*

Overall, Costs Lawyers are more likely to be optimistic than pessimistic about the expert role they play and the likelihood that AI is more likely to present opportunities than risks. However, responses to the survey and the interviews we conducted did suggest that there is a strong sense amongst Costs Lawyers that the value that they add is still not widely understood. Their concern is that this could lead some clients to make the mistake of thinking they could replace their Costs Lawyers with software. To some extent, this risk, and the risk of the erosion of entry level training opportunities for new Costs Lawyers, are already priced into the sector, as they are perceived to be more driven by the introduction of the fixed costs regime than by AI.

The CLSB could help to dispel some of the perceived risks of AI held by Costs Lawyers by clarifying its view, as a regulator, of how the use of AI technology could safely be used by Costs Lawyers. This view would ideally dovetail/complement that of the SRA, to ensure that those individuals who are in dual regulated environments do not have to contend with conflicting guidance.

## Conclusions

The legal services market is undergoing a period of significant transformation, driven by technological changes and evolving regulatory frameworks. This process is still at its early stages and the costs sector is perhaps less advanced along the adoption curve within the wider legal market, given the role that Costs Lawyers play within it. Nevertheless, this report has highlighted how Costs Lawyers, and the costs sector more broadly, are experiencing these changes so far, the challenges and opportunities that lie ahead, and what support they need to succeed in future.



### A case of cautious optimism?

The last decade, and even the last few years since COVID, have seen accelerating transformation which lays the groundwork for even more change in future. Costs Lawyers appear to be broadly positive and optimistic about the potential impact of technology on their work - perhaps because they have already adapted to the Cloud and to paperless practice. Software tools such as CostsMaster, Proclaim and other forms of costs and case management software are now ubiquitous, even if they are far from perfect. There certainly appears to be scope, based on the views of our interviewees, for AI to play a much bigger role in automating routine tasks, eliminating manual data entry, speeding up legal research and providing predictive insights. But these capabilities have not yet been fully developed for the costs market, so the greatest potential benefits remain tantalisingly out of reach.

But perhaps some Costs Lawyers are also more open to embracing technology because they recognise that the world of fixed costs is coming towards them at speed, and this compounds the argument for moving up the value chain.

Those who are anticipating a market in which the Costs Lawyer is more widely appreciated as a strategic expert in a highly complex and specialist niche area of law, rather than a post-litigation completer-finisher, are already beginning to use AI-driven tools to support their costs work. The AI embedded in Lexis Nexis, Westlaw and similar research tools will grow in use in the legal sector, so it is essential for Costs Lawyer wishing to move up the value curve that they keep pace with such developments.

*"We are cautiously positive about AI. It can significantly reduce the time spent on tedious tasks, allowing us to focus on applying our expertise to more complex issues"*

*Interview with Costs Lawyer in an SRA-regulated firm*

A subsidiary question for the wider legal sector, and perhaps something to be raised with the LSB, is the extent to which there is comfort in the oligopolistic position of such legal research suppliers, sufficient scrutiny of how their software is working for the legal sector and whether they are affordable for smaller organisations operating in the sector?

New technologies also enable the costs sector to offer more value to clients, through better resource allocation, enhanced billing practices and better engagement with clients at a far earlier stage than in the past. Indeed, a common theme among Costs Lawyers regardless of their environment for practice, was that they are being approached earlier and playing a more strategic role throughout cases, because of the greater awareness of costs issues created by costs budgeting.

*“Cost budgeting has ... allowed that interaction at a far earlier stage (between client and lawyer) .... a lot more are coming to me during case development to say, how is this going to impact me in the long run at the end of the case?”*

*Interview with Costs Lawyer in an SRA-regulated firm*

These developments have not yet had a particularly strong consumer impact, but there was some evidence from some of our interviews with Costs Lawyers that consumers were becoming more aware and more directly engaged with costs, than in the past.



## The case for more education and training

Training on technology issues was identified in our survey as a high priority for Costs Lawyers. But, at present, there is so much change in the world of costs law that it is a struggle for most practitioners to find the time to stay abreast of developing technologies on top of the other demands for continuous professional development. This is likely to remain the case until costs specific technology or clear costs sector uses have developed and it becomes essential to embrace AI tools to remain competitive. However, those who want to stand out and have the interest and capacity to engage with the latest technology developments will find that there is a growing opportunity to utilise no-code applications<sup>18</sup> or to engage with low-cost developers to support the development of bespoke costs related applications.

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<sup>18</sup> See glossary of terms – no-code applications are applications that can be used by anyone to undertake complex tasks without any computer coding knowledge (e.g. Apple was the first to introduce a visual, drag and drop approach to computing in the 1990s, compared to the Microsoft MS-DOS approach which required users to know which computer code prompts to input to undertake different tasks.

Encouraging the provision of training programmes, workshops and certifications in costs related legal technology will all help to encourage the market to keep moving in the right direction.



## Looking ahead

The future of the costs legal market is closely tied to its ability to embrace and leverage new technologies. By staying at the forefront of digital innovation, Costs Lawyers can unlock new opportunities, enhance their service offerings, and remain competitive in a rapidly changing legal environment.

The challenge of how to help the sector unlock these opportunities is significant. The costs market is small and fragmented with little buying power and, despite the broadly positive inclination of the costs sector in favour of technology, there are barriers to its adoption and dissemination. These include concerns over regulatory compliance, the cost of technology investment, and making the business case for technology investment in the costs sector.

Addressing these barriers will require a combined effort from regulators and professional bodies, the courts, and the profession. But if costs budgeting shows us one thing it is that the market can move if it is given direction. A similar effort may be needed to create an environment that supports technological innovation and adoption in costs. As the comment above, illustrates, there is still scope for some more creative design thinking in the world of costs which would help to create a better environment for the development of transformative software.

*"I still think that they could do a lot more with the process itself, you know, even without technology, because we have cost budgets that are in many ways are a bit of a light touch actually in, in terms of you have this much money to do all of this work. But we still insist on putting a detailed bill together at the end with everything in it, you know. And I think there could be more to be done around using budgeting a bit more in the whole process, to be honest."*

*In-house Costs Lawyer*

The CLSB has a pivotal role to play in guiding Costs Lawyers through this period of transition. By promoting technological proficiency, ensuring regulatory compliance, and supporting continuous professional development, the CLSB can help Costs Lawyers grasp the opportunities presented by this new technological era and to deliver more value both to their clients and to the legal sector in general.

## Recommendations for the CLSB

The guidance to legal regulators issued by the LSB in April 2024 suggests fifteen different actions that regulators could consider when addressing how they can encourage the take up of technology in their regulated communities. These recommendations are intended to meet the following three outcomes:

1. Regulation enables the use of technology and innovation to support improved access to legal services and to address unmet need.
2. Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.
3. Regulation actively fosters a regulatory environment that is open to technology providers and innovators.

The evidence gathered through our survey and interviews with Costs Lawyers, together with background information on how technology is influencing the legal market more generally, suggests that there are eight areas of activity which would help the CLSB to address the recommendations of the LSB, and support the take-up of technology by the costs sector. These are:

- i) **CPD** – Encouraging Costs Lawyers to become better informed about new technologies, through the tools available to the CLSB (e.g. competence statement, CPD requirements). It was clear from our survey that general knowledge levels in the profession about technology were low, so there is a low benchmark on which to build. The CLSB could consider, for example, making some technology related CPD a compulsory element, as some US and Canadian legal professions have chosen to do. This would, however, require the availability, or curation, of appropriate resources to support this; a task which ACL or ACLT could support?
- ii) **Guidance** – A popular request from Costs Lawyers responding to our survey was for more guidance from the CLSB on the ethical use of AI. Many of the concerns that might affect Costs Lawyers' use of AI are similar to those experienced by other types of lawyers and suggest that the CLSB should be able to use the guidance produced by others as a starting point for anything that it wishes to issue specifically for Costs Lawyers and the context in which they work. This guidance could also help to encourage Costs Lawyers to work with consumers by explaining how to manage the technology risks and opportunities arising from this type of work.
- iii) **Cyber security** – The actual level of knowledge and concern in the profession about cyber security may be higher than indicated by our survey, but it appears that Costs Lawyers do need to up their game in this



area. The CLSB could consider using the tools at its disposal – the Ethics Hub, risk outlook and other communications, as well as the annual renewal process to emphasise this area of risk to Costs Lawyers and explain how it might be mitigated.

- iv) ***Engagement with Costs Lawyers providing services to consumers*** – much of the LSB’s guidance focuses on the use of technology to assist consumers. As only a small fraction (around 10%) of an already small profession accepts direct instructions from consumers, Costs Lawyers are unlikely to move the market in any meaningful way. However, the CLSB could engage more closely with the group of Costs Lawyers who do take direct instructions, e.g. through periodic online “town hall” meetings, which would allow for open discussion on the topic of evolving technology to support consumer clients/litigants-in-person.
- v) ***Consumer facing guidance*** – Indications from some interviewees suggest that consumer awareness of costs has risen in recent years, following greater media coverage. The CLSB could work with consumer facing organisations, or others that might deal with litigants in person, to provide more detailed consumer facing guidance on costs and points for consumers to be cautious of when self-serving using technology.
- vi) ***Encourage developers to look at the Costs sector*** - An important barrier for Costs Lawyers in adopting technology is the availability of appropriate tools. The CLSB, in collaboration with ACL, could raise awareness of the gaps in the market by bringing together interested Costs Lawyers and individual developers to explore what might be possible, e.g. through a form of “hackathon”. There are a growing number of individual developers in the market with AI capability who may well be willing to work on low-cost projects to help costs law firms find solutions to their individual issues (e.g. to reduce manual inputs). The level of awareness of what is needed and what is possible on both sides is low, and there is therefore perhaps scope to raise the familiarity of both Costs Lawyers and developers in the possibilities in the sector through an online or in-person event.
- vii) ***Engage with the courts*** – Our survey and interviews produced some interesting feedback from Costs Lawyers on the impact (or lack of it) from the digitisation of the courts. This experience could be shared with the judiciary and HMCTS leadership to assist them in understanding how the processes of budgeting and e-billing could be further improved.
- viii) ***Additional website content*** – The CLSB’s website has become an extremely useful tool and contains some helpful content that could be used by consumers. There is scope for further development of this consumer facing content with additional, simple FAQs or explanations



(e.g. on how the system of costs recovery works or questions to ask about costs aspects when engaging with providers). The CLSB could also undertake SEO activity to ensure that its information is easy to find.

These recommendations are laid out in the following annex along with other lower priority activities that the CLSB could undertake in relation to the LSB's recommendations.

Despite the small size of the Costs Lawyers' profession, there are many useful things that the CLSB could do. We do recognise, however, that the CLSB has limited resources so where the above recommendations are likely to require additional resources, external funding could be sought to support its engagement in a consumer facing package of activity.

Nonetheless, even if the CLSB simply concentrates on the tools that it has most readily at its disposal, it will certainly be able to help the Costs Lawyers profession move along the AI/technology adoption curve.

Hook Tangaza

August 2024

## Annex: LSB Recommendations – Areas for CLSB Action

<b><i>Outcome 1: Regulation enables the use of technology and innovation to support improved access to legal services and to address unmet need.</i></b>		
<b>LSB Recommendation</b>	<b>Possible Action for CLSB</b>	<b>Priority</b>
a. Consult with the public to better understand their needs and obtain and act on feedback related to using technology and innovation to access legal services.	The CLSB has a survey for consumers available on its website. A more visible embedded survey (e.g. using SurveyMonkey) could be placed on the website's home page to gather views from consumers about how they would want to get introductory information about costs from e.g. chatbots or other online sources	Low
b. Promote the use of technological solutions to share information with consumers about price, quality, and routes for redress - including ensuring that consumers are aware of the redress mechanisms for legal services provided by technological solutions or service innovations.	The CLSB might also seek to obtain funding (e.g. from a future RPF or equivalent source e.g. Legal Education Foundation) for a project to develop a tool to assist litigants in person with some initial navigation based on their issues, about costs and costs risks. This would be intended to build further on the good work done with Legal Choices and add a further layer of specificity around costs issues.	Low
c. Provide information to the public to explain the benefits of using technology and innovation to access legal services in order to build and enhance public trust.	The CLSB has expanded its website to include a section of FAQs for consumers and a filter on the register which allows individuals to select only those Costs Lawyers who represent/advise individuals directly. A further evolution of the register could include embedded links to the websites of the organisations in which these individuals work. Further simple guidance on costs (e.g. fixed costs, when they apply and when they do not, avoiding nasty surprises etc) would help to build confidence and awareness amongst consumers.	Low
d. Understand the needs of different consumer groups/segments and the barriers they may face in accessing legal services provided by technology and innovation, and how these barriers can be addressed.	There is scope to look in more depth at litigants-in-person as a specific segment of the costs market, given they are likely to be most exposed to barriers in using technology to meet their legal needs. Guidance for this group might be produced jointly by the CLSB and other frontline advice providers on the costs aspects of litigation.	Low

<b>Outcome 2: Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.</b>		
<b>LSB Recommendation</b>	<b>Possible Action for CLSB</b>	<b>Priority</b>
a. Grow knowledge of technology and innovation and the potential benefits and risks to consumers related to their use in the provision of legal services.	The consumer market for costs work remains very small (only 10% of Costs Lawyers accept direct approaches from the public). The CLSB should keep this area under review, engaging directly with those Costs Lawyers who provide consumer services (see 2d below). There might be scope for the CLSB to engage directly with developers to encourage them to understand the challenges that Costs Lawyers face and which AI might help to address. This could be done by way of some kind of costs “hackathon” (see glossary).	Medium
b. Consider the risks to consumers related to the use of technology and innovation in the provision of legal services will be assessed, monitored, and mitigated,	We recommend noting that the consumer risk in relation to technology and innovation for costs is still relatively low. However, this risk may increase if Costs law firms see more direct approaches regarding Solicitor and Barrister costs, or if consumers start using Costs Lawyers to plan their litigation from an earlier stage. (Medium) The CLSB should keep the growth of consumer activity by the Costs Lawyer profession under review and consider, for example, providing more specific guidance to Costs Lawyers engaged with such clients about potential ethical risks (e.g. if developing/using costs chatbots, when using client portals, cyber/information security etc). (High)	Medium/ High
c. Use ongoing competence requirements to encourage legal professionals to stay abreast of developments in technology and other innovations in the sector and how they might be used to improve access to services.	This is one of the areas in which the CLSB can have most impact on the technological take up of the Costs Lawyer profession. The CLSB should use both its competence requirements and ongoing CPD requirements to incorporate technological knowledge and capability elements.	High
d. Monitor the impact of the use of technology and innovation on consumers and their ability to access legal services, including assessing consumer complaints to identify and track complaints related to the use of technology or innovation in the provision of legal services.	The evidence that emerged from the AI and Technology survey of direct consumer engagement with Costs Lawyers suggests that although this is a small part of costs activity, it is growing. The CLSB could seek to engage more directly with the Costs Lawyers who have indicated that they offer services directly to consumer clients, to establish how this segment of activity is changing year on year and what this might suggest for further policy evolution.	High
e. Be open to experimentation when considering new technology and innovative solutions that can provide services for the benefit of consumers.	As the CLSB does not regulate entities this may be of less immediate relevance, however the CLSB could still signal on its website that it is always interested in hearing from technology providers who have applications or the potential to develop applications that could	Medium

	improve the productivity of the costs sector. The survey suggested that there is a gap in the market for an appropriate, updated costs software. Even if this were not of immediate direct benefit to consumers, it could help to reduce with the management and reduction of legal costs in general. (see related point at 2a above)	
f. Be aware of, and use, where relevant, wider available guidance relating to current and emerging risks related to the use of technology, for example: on cyber threats and data protection regulations, as well as the use of artificial intelligence.	The apparent low level of awareness in the profession of cyber threats is an area that the CLSB could immediately address through its risk outlook and ongoing competence requirements. Although cyber risk has been flagged in previous risk outlooks, this could be given greater prominence and included as a separate topic in the ethics hub. The CLSB might also consider whether it can do anything to encourage the entities in which Costs Lawyers work to obtain the Cyber Essentials mark.	High

<b>Outcome 3: Regulation actively fosters a regulatory environment that is open to technology providers and innovators.</b>		
<b>LSB Recommendation to regulators</b>	<b>Possible Action for CLSB</b>	<b>Priority</b>
a. Collaborate and co-operate with relevant stakeholders, including, but not limited to, technology providers, innovators, other regulators, legal professionals, unregulated providers, and consumer representative organisations.	This is an area where the CLSB could potentially play a useful role in helping to raise awareness amongst developers of the Costs sector, the data that is potentially available within it and the opportunities for providers to undertake small-scale projects. This might best be organised jointly with other regulators who are seeking to encourage low cost, small-scale projects to help the take up of technology amongst smaller legal services providers. The CLSB should take steps to engage with the courts, encouraging the judiciary to gain a better understanding of how Costs Lawyers can support the adoption of e-bills and similar developments.	Medium
b. Provide those exploring innovative approaches to legal services delivery with support and information that helps identify and address both real and perceived barriers to entry.	This is less directly applicable to the CLSB as it does not regulate entities, nor does it prevent Costs Lawyers from working in any type of organisation. There might be something that could be done, however, to increase awareness amongst tech providers and developers of opportunities in the costs sector (see above e.g. in relation to engagement and outreach to include the sector and developers).	Medium
c. Review regulatory arrangements to identify potential barriers and working to address these where possible.	Costs Lawyers were unable to identify any existing regulatory barriers that prevented them from adopting technology, other than a lack of confidence. But the CLSB could, nonetheless, assist through education (working with ACLT and ACL) and by issuing more ethical guidance that builds on and dovetails with any SRA guidance.	High
d. Provide technology providers and innovators with access to relevant data where appropriate.	The CLSB already provides most of the relevant data it can via its register.	Not relevant
e. Learning from best practice in other jurisdictions and sectors related to the promotion and use of technology and innovation for the benefit of consumers and the public.	Costs lawyers do not have many direct comparisons in other jurisdictions. There are sources that may be useful for the CLSB to draw on (e.g. International Conference of Legal Regulators) to stay abreast of what more mainstream legal regulators are doing in relation to technology and innovation.	Low

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## Annex: Survey and Interview Questions

Why complete this questionnaire?

Dear costs specialist,

Thank you for opening the link to this questionnaire!

We at consultancy firm Hook Tangaza have been commissioned by the Costs Lawyer Standards Board (CLSB), to gather information from the costs profession about attitudes and usage of technology by the costs profession. The results of this exercise will help to shape the CLSB's approach to this topic going forward.

We are contacting you because you appear on the CLSB's register or because you have connected with us previously through LinkedIn or other channel on costs related matters. The answers you give to this questionnaire will only be shared with the CLSB in an aggregated form and are anonymous unless you choose to share your contact details with us. The questions should take only around 5 minutes to complete but the results will be extremely useful in shaping future policy.

Please feel free to pass this questionnaire on to other colleagues. It will remain open for responses until 6pm on Monday 10th June.

Please feel free to contact us if you have any queries or concerns at [mail@hooktangaza.com](mailto:mail@hooktangaza.com)



## About you

**Responses to these questions will help us to contextualise your answers to later questions.**

**\* 1. What is your professional role?**

- ☐ Costs Lawyer
- ☐ Costs Draftsman
- ☐ Trainee Costs Lawyer
- ☐ Other (please specify)

**2. What type of organisation do you work in?**

- ☐ Costs Law firm
- ☐ SRA-regulated firm
- ☐ In-house (eg; a bank, corporate or government department)
- ☐ Sole practice
- ☐ Other (please specify)

**\* 3. What is your role within your organisation?**

- ☐ Costs firm owner or partner
- ☐ Team or department head
- ☐ Employee
- ☐ Consultant
- ☐ Sole Practitioner
- ☐ Other (please specify)

#### For Costs firms

\* 4. What is your organisation's main costs related activity?

- ☐ High value complex B2B litigation costs practice
- ☐ High value B2B insurance litigation
- ☐ High volume B2C insurance litigation
- ☐ Legal Aid
- ☐ General costs work
- ☐ Solicitor costs
- ☐ Other costs related activity: Pricing, project management, training etc
- ☐ Other (please specify)

#### For SRA-regulated firms

\* 5. Which of the following best describes your organisation?

- ☐ Top 100 law firm/City law firm
- ☐ Large regional law firm
- ☐ High street/general practice solicitors' firm
- ☐ Specialist/boutique law firm
- ☐ In-house legal department in company/private sector organisation
- ☐ In-house legal department in public sector/local government
- ☐ Other (please specify)

### Your knowledge and awareness of technology

**This section assesses your familiarity with current technological trends and AI developments, particularly in how they influence costs and efficiency in the legal market.**

\* 6. How confident do you feel about your understanding of how the following emerging technologies can be used by the legal sector?

	Not at all confident	Slightly confident	Confident	Very confident
Generative AI (i.e. extrapolation - generation of new content from previous examples)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Predictive AI (i.e. data driven extrapolation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Smart contracts/ blockchain /DLT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Data analytics	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

\* 7. How much difference do you think that new technologies, and AI in particular, will play in your work within the next 5 years?

- ☐ **Insignificant** - I expect technologies like AI to play an insignificant role in my work over the next five years.
- ☐ **Minor** - I expect technologies like AI to affect others I deal with (colleagues and clients) but I think it will only have a marginal direct impact on my work.
- ☐ **Moderate** - I expect technologies like AI will become integrated into my existing work and I expect to use it to improve my overall efficiency and effectiveness.
- ☐ **Significant** - I expect technologies like AI to transform my role significantly.

### Your current use of technology and impact of AI on your work

**This section explores how you integrate technology and AI in your daily tasks, and their effects on productivity and overall job performance.**

**\* 8. What types of software and technologies do you currently use in your work? Select any which are applicable.**

- ☐ Microsoft Office (Word, Excel, Outlook, etc)
- ☐ Google Workspace (Docs, Sheets, Gmail, etc)
- ☐ Case management softwares (Clio, MyCase, etc)
- ☐ Accounting tools (QuickBooks, Xero, etc)
- ☐ Video conferencing tools (Zoom, Microsoft Teams, etc)
- ☐ Legal research tools (Lexis Nexis, Westlaw, etc)
- ☐ Bespoke AI tools
- ☐ Other (please specify)

**\* 9. Do you use specialist costs software in your work? If so, which?**

- ☐ CostsMaster
- ☐ Proclaim
- ☐ TimeSolv
- ☐ CLIO Manage
- ☐ Legal Costing Solutions
- ☐ In-house proprietary software
- ☐ Not applicable
- ☐ Other (please specify)

\* 10. Have you ever used a generative or predictive AI platform for your costs or related legal work? Select any that are applicable.

- ☐ ChatGPT, Bard (Large Language Models or LLMs)
- ☐ TimeSolv (AI-assisted billing based on time entries and case details)
- ☐ Zola Suite (AI-assisted billing reports and legal accounting)
- ☐ LawGeex (AI-powered contract review platform)
- ☐ Litify (Managing case costs and predictive billing)
- ☐ Premonition (Predictive case outcomes and insights)
- ☐ Clio (Billing trends and insights into spending patterns)
- ☐ ROSS intelligence (AI research assistant for case law summaries)
- ☐ Lexis Nexis and WestLaw (AI-powered case law search engine)
- ☐ None
- ☐ Other (please specify)

\* 11. Is your organisation investing in AI applications?

- ☐ Yes
- ☐ No
- ☐ Don't know

If yes, is this investment likely to impact on costs work? Comment here.

\* 12. Has digitization of the courts so far impacted your work as a Costs lawyer?

- ☐ **Not at all** - It has had no impact on my work as a Costs Lawyer yet.
- ☐ **Slightly** - I have noticed a slight impact in my work, but it has not significantly changed how I perform my duties as a Costs Lawyer.
- ☐ **Moderately** - It has moderately impacted my work including through software applications or tools that I now use regularly.
- ☐ **Significantly** - It has significantly impacted my work changing the way I used to do regular tasks. It has made information in the legal sphere much more accessible.

Any specific impact? (Please write here)

\* 13. Have you noticed any change in the way in which your clients are using technology, either in their dealings with you or in some other way that affects your work with them?

- ☐ **No, not at all** - there has been no noticeable change in how clients use technology.
- ☐ **Slight change** - Yes, but only very slightly and slowly so far.
- ☐ **Moderate change** - Yes, there is a noticeable, gradual shift towards the greater use of technology by clients.
- ☐ **Significant change** - Yes, there is a significant change in the way clients are using technology.
- ☐ **Not applicable to my work**

If yes, please give details here.

Your views on the future impact of technology on your work

**This section seeks your perspectives on how emerging technologies and AI advancements might shape your job, industry practices, and overall career landscape in the coming years.**

\* 14. On balance, do you think that the greater use of AI in the legal industry presents an opportunity or risk to Costs Lawyers?

- ☐ Opportunity
- ☐ Risk
- ☐ Don't know/undecided

Can you explain why you chose this answer?



### Risks and opportunities

\* 15. Which of the following opportunities do you think AI might present to Costs Lawyers/the Costs market? (Please rank in order of importance, 1=most important, 5=least important)

- Faster document preparation
- Assistive technology for costs budgeting
- Assistive technology for legal research
- Assistive technology for litigation strategy (e.g. through outcome simulation)
- Other (Please give details in text box below)

16. If you selected "Other" in response to the previous question, please give details here.

\* 17. Which of the following risks concern you most? (Please rank from most significant risk to lowest risk where 1=most significant risk, 6=lowest risk)

- AI hallucinations
- Ethical concerns over AI inbuilt biases
- Lack of transparency in how AI produces results
- Erosion of value to clients of expert judgment
- Erosion of training opportunities
- Other (please add details in comment box)

18. If you selected "Other" in response to the previous question, please give further details here

\* 19. Do you think that there are other technological changes/advances that might impact your work in future? (eg; insurance payouts based on smart contracts etc).

- ☐ Yes  
☐ No

If yes, which?

#### Barriers to greater adoption of technology

**This section examines the challenges and obstacles you perceive in implementing new technologies and AI in your work, including factors such as cost, training, and resistance to change.**

20. Are you planning to, or would you like to increase the use of technology in your costs work in future?

- ☐ Yes
- ☐ No
- ☐ Don't know/haven't decided

Please add any other comments you think might be useful

21. What barriers, if any, do you face in adopting technologies such as AI? Select any relevant.

- ☐ Knowledge of different technologies, such as AI and understanding of their potential applications
- ☐ Time to develop/consider a business case
- ☐ Cost of investing in technology
- ☐ Integration of new technologies such as AI into legacy systems
- ☐ Training/retraining costs
- ☐ Internal resistance to change
- ☐ Concern over regulatory or compliance implications
- ☐ I don't face any barriers
- ☐ Other (please specify)

#### Regulatory concerns

\* 22. Can you give more details of your regulatory or compliance concerns? (e.g. are these related to compliance with the CLSB's rules or the code of conduct? Or are they related to data protection? SRA rules? etc)

What might help you to increase your use of technology?

**This section explores the factors and resources that could encourage and support you in adopting and integrating AI and other new technologies into your work, such as training, funding, or organizational support.**

\* 23. What would help you/your firm to increase your use of technology in your costs work?

- ☐ More training/education on new technologies and their implications
- ☐ Improved AI driven software designed specifically for the costs sector
- ☐ More consultation by the courts/public sector prior to adoption of new systems that external parties need to interact with
- ☐ Support with accessing lower cost or grant funding to support technology adoption
- ☐ Other (please specify)

\* 24. Is there anything else that you would like to add that would help the CLSB understand how Costs Lawyers are using technology?

Would you be willing to give your views in a more in-depth interview? If so please give us your contact details below.

25. Contact Details

Email address

## About the interview:

This is being conducted as a semi-structured interview (i.e. We are asking all interviewees questions that may not be identical, but which have the same underlying information that they are trying to elicit).

Our guiding objective is to understand and delve more deeply into the experience of being a Costs Lawyer in the United Kingdom today with the overall purpose of gathering information to help us provide the CLSB with a better understanding of how technology is affecting the Costs market and whether there is anything that they can or should do in response.

Interview will be recorded for internal purposes: From this we can generate a transcript which will make it easier to aggregate views from the various interviewees we will be talking to. The video will be destroyed immediately when we have the transcript, and the transcript will be anonymized. We will not share the video, transcript, etc. We will not share the video, transcript etc. With anyone outside HT, nor attribute your views to you personally nor to your firm. Any direct quotes used in the final report will be cited as e.g. "Costs lawyer/draftsman/specialist/trainee" without any mention of your name nor your firm. Any direct quotes used in the final report will be cited similarly and double checked to make sure that your identity cannot be inferred in some way.

The interview will take about 45 minutes, and we will deal with questions covering 4 themes: ***impact of technology, barriers to technology adoption, training and education needs and the future of technology in the Costs market.***

The questions will be open-ended answers, and the interview will be conducted as a conversation, but I may need to move us to the next topic so we can cover everything. I will give you time at the end to add any further comments that you want to feed in on things we haven't covered but you feel we should have.

## Question sets (not all questions will be asked to all interviewees)

**Icebreakers: About you/About your firm:** basic info at start (age, location, how long practicing, firm size & type etc.)

- How long have you been a Costs Lawyer/Costs draftsman/ Trainee Costs Lawyer/ other?
- How did you get into it? - Was it a conscious decision to practice Costs law or did it just happen?
- What motivates you to keep doing it?
- What types of cases do you usually deal with?

- How has the landscape of Costs law changed since you started practicing?

### **Question Block 1: Impact of Technology**

**(To understand how technology is perceived by Costs Lawyers and its potential impacts on the Costs legal market)**

1. How significant is technology to your work? Does it impact your day-to-day work life and process?
2. What changes do you see in the way your clients are now using technology? Does their limited or ample knowledge of technology influence your way of dealing with them?
3. Why do you use (their chosen cost software)? Did you have to decide between (their chosen cost software) and other similar softwares?
4. How has using (their chosen cost software) impacted your work?
5. Example of a case where technology influenced the way it was dealt with (process) or the outcome of the case (eg; first time using A.I assisted research to meet a deadline, etc)
6. How do you stay updated on emerging technologies in the Costs law sector?

### **Question Block 2: Training and Education Needs**

1. You picked (webinars, in-person workshops, etc) as your educational resource of choice to help become adept to technology. Why do you feel this is the best way to train Costs lawyers on using technology?
2. How important is the cost of adopting new technologies to your workflow?
3. What do you think will make a Costs software or emerging technology accessible to you?
4. Can you recall a time or an experience where training improved the way you use technology? (eg; advanced features of Excel, SharePoint, etc)
5. Do you think it is possible to balance the time spent on learning new technologies with your responsibilities as Costs lawyer/draftsman/specialist?
6. What areas do you think you will require tech training in as a Costs lawyer?

### **Question Block 3: Barriers to technology adoption**



1. (Based on their answer to what barriers they face in adopting technology)  
Why do you think \_\_\_\_\_ is a relevant barrier when it comes to adopting technology for Costs lawyers?
2. Do you think regulatory restrictions play a role in your concerns towards technology adoption?
3. Why do you believe (their chosen order of importance eg; faster document preparation, assistive technology for legal research, etc) is more significant than their least ranked option?  
***Based on which of the following opportunities do you think AI might present to Costs Lawyers/the Costs market? (Please rank in order of importance, 1=most important, 5=least important)***
4. Can you recall or describe a situation where a barrier to adopting a new technology at your workplace affected your work?
5. Do you think A.I and A.I powered softwares are more challenging to adopt? If yes, why?
6. Do you perceive a generational difference in the way technology is adopted in the Costs legal sector?

#### **Question Block 4: Future of technology in the Costs market**

1. Are you planning to increase the use of technology in the future?
2. (Depending on their survey option) Why do you feel A.I is a risk/opportunity to the Costs legal market?
3. How do you see the role of a Costs lawyer changing with growing advancements in technology?
4. Will you personally take steps to future-proof your employment skills with technology training?
5. Do you believe there are ethical considerations to adopting increased technology in the Costs legal sector?
6. How would you assess future data privacy and security challenges when it comes to adopting new technologies?
7. What is something you would tell a new Costs lawyer or trainee starting their career in this new technological legal landscape?

## Draft for board approval (October 2024)

### To be presented as web content on the Ethics Hub

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## Addressing pay gaps

### Introduction

This topic note provides information about differences in pay and earnings in the Costs Lawyers profession, and makes suggestions for how individual Costs Lawyers and their employers can begin discussions around addressing these differences.

### Who should read this topic note?

This topic note is aimed at individual Costs Lawyers at all levels of their career, and employers of Costs Lawyers. Whilst the section titled 'What can employers of Costs Lawyers do?' is aimed primarily at employers, individuals with team management or leadership responsibilities might also find that section helpful.

### Why is this important?

A recent CLSB [diversity survey](#) focused on pay and earnings. That survey showed a substantial pay gap between female and male Costs Lawyers.

Pay gaps are not unique to the Costs Lawyer profession. Data from the [Office for National Statistics](#) ('ONS') shows that in 2023/24, the median gender pay gap for legal professions as a whole was 17.6%. Gender pay gaps vary within different branches of the legal profession. For example, the ONS figures for 2023/24 show a 29% median pay gap for barristers and judges, compared to a 10% median pay gap for solicitors.

Pay gaps do not only occur in relation to gender. [ONS data on ethnicity pay gaps](#) shows that employees who are Black, African, Caribbean or Black British consistently earned less than White employees between 2012 and 2022. This was the only ethnicity group to consistently have earned less than White employees. ONS data on [disability pay gaps](#) shows that disabled employees earn less than non-disabled employees, and that this pay gap has increased in recent years. [Reports](#) from individual employers and market studies have demonstrated differences in pay between employees who identify as LGBTQ+ and those who identify as straight or heterosexual.

Pay gaps can affect a business's reputation as an employer, making it harder for them to [recruit and retain talented staff](#). They also negatively affect an individual's experience and satisfaction at work. With clients increasingly focused on their lawyers' equity and inclusion credentials, pay gaps can also influence whether or not clients wish to instruct a particular firm. Closing pay gaps is therefore good business sense, as well as an ethical imperative.

Equality in relation to pay is a priority for the CLSB. Whilst we appreciate that there may be systemic and structural issues outside of our control that could be causing differences in pay and earnings, supporting the profession to close pay gaps is an important part of our work encourage an independent, strong, diverse and effective legal profession. This topic note is



intended to provide practical suggestions for action that Costs Lawyers and their employers could take to help tackle this important issue.

## What can employers of Costs Lawyers do?

### Measure and report data

Employers with over 250 employees are required by law to report gender pay gap data each year.

Ethnicity pay gap reporting is currently voluntary for organisations, as is reporting on pay gaps for other protected characteristics, such as disability and sexual orientation. Many organisations publish this data even though they are not required to do so, in the interests of transparency. Similarly, many organisations also voluntarily report gender pay data even though they do not meet the 250 employee threshold, in the interests of transparency.

Analysing pay information is a way to identify disparities at your organisation and where action needs to be taken to address these. Even if you are not required to measure and publish pay and earnings data, doing so will give you robust evidence with which to lead an informed discussion about pay and earnings at your organisation. Measuring and publishing the data also promotes a culture of transparency and accountability. It can help you to demonstrate to your staff and clients that you are an employer that is committed to proactively addressing barriers to equity and inclusion at your organisation.

### Take practical action

Once you have analysed the data, consider what practical steps you can take to address any differences. This might include, but is not limited to:

- Ensuring your organisation's pay, promotion and performance processes are fair and transparent;
- Analysing information about bonuses, overtime and other aspects of pay to see if particular types of remuneration are contributing to pay gaps at your organisation;
- Assessing the impact of factors such flexible working, caring responsibilities and shared parental leave;
- Having open discussions with staff about pay gaps and what could be done to overcome these, and listening to their ideas and concerns.

The Government Equalities Office has published a comprehensive [guide](#) to closing gender pay gaps, which includes advice about how to address the gap and a create an action plan. Although this particular guide focuses on gender pay gaps, many of the actions contained in it are applicable to other types of pay gaps. The Equality and Human Rights Commission also provides [guidance](#) on action you can take to address pay gaps generally.

Having developed an action plan, consider how you can proactively communicate this to your staff and provide regular updates on progress. Seek staff input and be open and responsive to suggestions. Where there are pay gaps at your organisation, there may not be a 'quick fix', so it will be necessary to manage expectations and keep staff informed about what action will happen, how and when.

## **Consider developing an equal pay policy**

As well as developing an action plan, as an employer you could consider developing a specific equal pay policy that sets out how your organisation will measure pay gap data, how it will take action to address disparities and how it will handle complaints about pay. Further information about developing an equal pay policy is available from the [Equality and Human Rights Commission](#).

## **Avoid making assumptions**

When considering the causes of - and how to address - pay gaps, it is important to avoid making assumptions, or following stereotypes about what might be causing pay differences - for example, assuming that men are less likely to have caring responsibilities.

It is also important to recognise that some groups will face different barriers to equal pay than others. Organisations should therefore take action to understand those specific differences rather than taking a one-size-fits-all approach.

## **Recognise challenges**

As an employer, remember that pay and earnings can be a different and emotive subject for staff to talk about. Some staff may feel daunted by the prospect of raising their concerns about pay and earnings, while others will feel confident bringing up issues to senior management. With this in mind, consider using different ways of engaging with staff to seek their views and ideas regarding pay, such as anonymous surveys, focus groups, utilising staff networks and making time to speak to staff who may wish to meet on an individual basis.

## **What can you do as an individual Costs Lawyer?**

If you are a Costs Lawyer, there are many different reasons why you may want to start a discussion about pay gaps with your employer. Perhaps your firm has just published its annual pay gap report and you are concerned by some disparities highlighted in the data. Or perhaps you are part of a staff network and you wish to start a conversation with senior leaders around what could be done to address pay gaps. Perhaps your organisation isn't required to monitor and publish pay gap data, but you would like them to do so. Or perhaps you are in a leadership position yourself and want to ensure your team is being fairly treated.

Discussing pay gaps at your firm with your employer may feel like a daunting prospect. It can be hard to know where to start, or what to suggest. You might feel worried about what will happen if you broach the topic. You might even feel like it's not really your 'job' to be the person who starts the conversation. If you have concerns like these, remember that as a Costs Lawyer you have a duty under Principle 6 of the Code of Conduct to ensure that you "treat everyone fairly and equitably, with dignity and respect", and a duty under Principle 1 of the Code of Conduct to "act with honesty and integrity, and maintain your independence". Taking action around pay gaps doesn't mean you're a troublemaker, it aligns with your professional and ethical obligations, which are shared by your Costs Lawyer colleagues.

## **Gather data**

A good place to start is by gathering robust evidence and data about pay gaps at your organisation. Your employer might already publish pay gap information that you can use to start the discussion.

If your employer does not already publish pay gap information, you can use the data highlighted in this topic note which shows that pay gaps exist across the legal sector. You may also find the [CLSB's diversity survey](#), which focused on pay and earnings, helpful.

You could also encourage your employer to start measuring data for your organisation if they don't already, by highlighting the business advantages of doing so – such as the positive reputational impact of demonstrating the organisation's commitment to understanding and addressing inequalities.

### **Start a conversation**

If you feel comfortable doing so, consider how best to begin discussions about pay gaps at your firm. Give consideration to who will be key stakeholders in this discussion, who you may need to influence to create change, and who might have concerns about the subject. You could consider approaching relevant staff networks about the issue, discussing with your firm's HR team, or raising with senior managers directly.

Whichever approach you decide to use, remember that pay and earnings can be a difficult and emotive topic for many people; not all of your colleagues may feel comfortable talking about this issue. Some colleagues may feel worried by the prospect of raising their own concerns about pay and earnings, while others may feel confident talking openly about this subject.

You may have colleagues at firms who have successfully taken action to reduce or close pay gaps. Talking to those colleagues about their approach, what worked and what didn't, can be a helpful way to identify how best to start discussions at your organisation.

It might also be useful to point to this topic note in order to highlight that the CLSB, as the profession's regulator, is encouraging all organisations that employ Costs Lawyers to be open and receptive to conversations about pay gaps.

### **Promote the business benefits**

When discussing pay gap issues with your employer and/or colleagues, you might find it helpful to highlight the impact of pay gaps on business, such as the negative impact on recruitment and retention, the reputational risks associated with pay gaps, and the positive impact that addressing pay gaps can have on winning new business from clients and attracting and retaining new hires.

### **Share available resources**

There is a list of resources at the end of this topic note that it may be helpful to share with your employer and/or colleagues when discussing pay gaps and action that could be taken.

### **Support ongoing efforts**

If you don't feel comfortable beginning conversations about pay gaps yourself, consider whether you might be able to support colleagues who are doing so, or who wish to do so.

This might include joining a focus group or staff network, attending events about pay gaps, or sharing relevant online resources, such as the Government Equalities Office guidance.

If your employer already has a pay gap action plan, or wishes to develop one, you could consider whether - and how - you could contribute to those efforts.

### **If you need more support**

Issues relating to pay and remuneration can be emotive and challenging to talk about, and difficult to resolve. If you're dealing with pay gap-related matters and need additional support, [LawCare](#) provides a free, confidential helpline that offers information and support for legal professionals (0800 279 6888).

If you are not being paid equally and efforts to resolve this with your employer have failed, you may wish to consider raise a formal grievance or make a formal claim. ACAS provides more [information](#) about how to do this.

## **Further resources**

[CLSB diversity survey – pay and earnings](#)

[Office for National Statistics gender pay gap data](#)

[Office for National Statistics ethnicity pay gap data](#)

[Office for National Statistics disability pay gap data](#)

[Closing your gender pay gap](#) (Government Equalities Office, January 2024)

[Touching the Void](#) (Law Gazette, April 2024)

[Mind the early gender earnings gap at the Bar](#) (Bar Council, April 2024)

[Ethnicity Pay Gap: What You Need to Know](#) (The Law Society, November 2023)

[Gross earnings by sex and practice area at the self employed bar - 2023](#) (The Bar Council, October 2023)

[Closing the gender pay gap in the legal profession](#) (Gapsquare and Next 100 Years, June 2022)

[How to make an equal pay policy](#) (EHRC, September 2020)

[Equal pay - more action you can take](#) (EHRC, September 2020)

[LGBT+ staff earn £6,700 less than straight workers](#) (People Management, July 2019)

## **Equality, diversity and inclusion**

### **Introduction**

Principle 6 of the Costs Lawyer [Code of Conduct](#) requires Costs Lawyers to treat everyone fairly and equitably, and with dignity and respect. This includes your clients, your colleagues and third parties.

This topic note sets out Costs Lawyers' obligations in relation to equality, diversity and inclusion.

### **What does equality, diversity and inclusion mean?**

Equality, diversity and inclusion are fundamental to creating a strong and independent profession where everyone, regardless of their background, can succeed. Equality, diversity and inclusion are also important components of access to justice, and help to create a legal system that reflects the variety of communities and groups that it serves.

We consider **equality** to mean removing barriers, eliminating discrimination and ensuring equal opportunities and access for all.

We consider **diversity** to mean celebrating difference and valuing everyone's contribution. Each person is an individual with visible and non-visible differences. Some of these differences are [protected characteristics](#) for the purposes of the Equality Act 2010. However, we consider diversity as recognising and celebrating individual difference in its broadest sense. Diversity encompasses not just protected characteristics, but also social background, career path, and diversity of perspectives and lived experiences.

**Inclusion** relates to the culture in which people work. An inclusive workplace culture is one in which everyone feels valued and able to be themselves. Inclusion encompasses equality and diversity, and is an important factor for innovation and business success.

It is important to remember that equality, diversity and inclusion are interdependent, but not interchangeable. For example, an organisation may have a diverse staff base, but that does not automatically mean that the organisation has an inclusive culture. Similarly, an organisation may be very successful at creating an inclusive workplace environment, but less successful at developing equality of opportunity for people seeking to work at the organisation.

### **Why is this important?**

Promoting equality, diversity and inclusion isn't just about doing the right thing or making sure you comply with your legal and regulatory obligations. It is also not about 'political correctness' or about 'being woke'. It also does not mean compromising

excellence. Instead, having regard to equality, diversity and inclusion is about developing a profession and workplace where *everyone*, regardless of their background, can succeed.

Research shows that diversity in the workplace enables business to thrive. [Our guide for Costs Lawyers on The Business Case for Diversity](#) provides a framework for understanding how diversity can benefit both employers and employees. Diversity of talent brings diversity of thought, perspective and experience, and inclusive cultures help everyone to feel respected, understood and supported. That in turn supports workplace productivity, wellbeing and innovation, which leads to a stronger, independent, more inclusive profession.

In addition, a diverse profession that reflects the wide range of communities and clients that it serves helps to boost public confidence in the profession. Clients are also increasingly focussed on equality, diversity and inclusion and expect their legal advisors to be able to demonstrate awareness of, and proactivity in, this important area.

## Links to other topic notes

Costs Lawyers may find it helpful to refer to the following notes and guidance alongside this topic note:

- [Bullying and harassment](#) [add link once live]
- [Starting conversations about pay gaps](#) [add link once live]
- [Vulnerable consumers](#)

## What do we expect from Costs Lawyers?

Costs Lawyers are expected to treat everyone fairly and equitably, and with dignity and respect, in line with principle 6 of the Code of Conduct. This includes your clients, your colleagues and third parties. Specifically, you must not unfairly discriminate against anyone on the grounds of a protected or other characteristic.

You also must not engage in or facilitate counter-inclusive conduct or harassment that, intentionally or unintentionally, narrows or denies opportunities to people because of their background or characteristics.

Costs Lawyers who are employers are required to make reasonable adjustments for those with a disability, to ensure they are not at a disadvantage by comparison to those without disabilities.

They must also have and adhere to a written policy which prevents discrimination and harassment and must investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate.

All Costs Lawyers are expected to have a complaints procedure in place that meets the CLSB's regulatory requirements (principle 3 of the Code of Conduct). You should ensure that any complaints relating to equality, diversity and inclusion, and/or discrimination, harassment or victimisation, are dealt with promptly, fairly, openly and effectively.

Please see our [Guidance Note](#) on complaints procedures for more information about effective complaint handling.

We also encourage Costs Lawyers to undertake training in relation to equality and diversity issues, such as addressing unconscious bias or developing an inclusive workplace culture. This kind of training will qualify for CPD points if relevant to your CPD objectives for the year.

## What can I do as an individual Costs Lawyer?

The legal profession faces several equality, diversity and inclusion (EDI) challenges that are [systemic](#). Consistent and concerted effort will be needed by the legal professions as a whole to overcome these longstanding and complex barriers.

However, there is still much that you can do as an individual to make a positive difference. Below are some suggestions for steps you can take in your everyday work:

- Be proactive about learning and sharing information with others. EDI is a continually changing area and there is always more we can learn and improve.
- Listen to others' wishes and preferences, and don't make assumptions about the perspectives and experiences of others. For example, if a colleague or client wishes to be referred to in a particular way, respect that. And remember we all make mistakes – EDI is a constantly evolving area. The important thing is to address the mistake, apologise and act on the mistake to prevent it happening again.
- Think about the language you use in your everyday work, and try to keep it inclusive and accessible. Adapt to the needs of clients and colleagues where possible, for example, when a client or colleague needs to receive information in a different format. Remember that some clients will be less familiar with legal terminology than other legal professionals, and that vulnerable clients may have particular needs.
- Consider your learning and development needs in relation to EDI, include them in your CPD planning and objective setting, and seek out relevant training opportunities. Share these with colleagues. Examples of common topics for short-courses on EDI issues include unconscious bias, disability awareness, sexual harassment and intercultural communication, to name just a few.
- If you are responsible for recruitment, consider how you are advertising roles, and the selection methods and criteria that you are using. Consider the barriers that may be faced by different groups of applicants, and how you might be able to mitigate these.

- Be aware of the risks of bullying and harassment, and take action to address this if you encounter it, in line with your obligations under Principle 6 of the Code of Conduct. You might find our topic note on [bullying and harassment](#) [add link when live] helpful in this regard.
- If you are in a senior leadership position, consider what steps you can take to improve EDI at your organisation. You should also ensure that your organisation's policies relating to EDI are upheld, and address areas of non-compliance.

## Further resources

[CLSB diversity data](#)

[The Business Case for Diversity - A Guide for Costs Lawyers](#) (March 2020)

[Mapping Systemic Barriers to Equality Diversity and Inclusion in the Legal Professions](#) (Legal Services Board, March 2024)

[The SRA's approach to equality, diversity and inclusion](#) (relevant for Costs Lawyers working in SRA-regulated firms) (November 2019)

[Equality Act 2010: Guidance](#) (gov.uk)



## Draft for board approval (October 2024)

### To be presented as web content on the Ethics Hub

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## Preventing bullying and harassment

### Introduction

Bullying and harassment has no place in the costs law profession. Bullying and harassment damages Costs Lawyers' mental wellbeing, creates toxic working environments and damages public perceptions of the profession. Bullying and harassment can also have negative impacts for consumers where this leads to someone being pressurised into acting unethically or unprofessionally, or otherwise making a mistake due to being bullied.

All Costs Lawyers should be able to work in an environment where they are treated respectfully, fairly and with dignity. Costs Lawyers and the firms in which they work should take allegations of bullying and harassment seriously and investigate them accordingly.

As a legal regulator, the CLSB has an objective under the Legal Services Act 2007 to encourage the development of an independent, strong, diverse and effective legal profession. Bullying and harassment undermines that objective, and the CLSB will consequently treat any incidents where a Costs Lawyer has been involved in bullying or harassment seriously. The CLSB, alongside the other legal regulators, is a signatory to the principles for [Tackling counter-inclusive conduct through disciplinary procedures](#). This confirms our commitment to taking action against counter-inclusive behaviour and to use the levers we have as a regulator to bring about meaningful change.

Individual Costs Lawyers have duties and obligations related to preventing bullying and harassment. Principle 6 of the Costs Lawyer [Code of Conduct](#) places a duty on Costs Lawyers to treat everyone fairly and equitably, and with dignity and respect.

### Who should read this topic note?

Costs Lawyers and employers of Costs Lawyers.

This topic note explores Costs Lawyers' obligations in this area. It also provides information about what to do if you are being bullied or harassed yourself, or if you become aware of someone else being bullied or harassed.

For employers of Costs Lawyers, this topic note sets out what you need to consider and provides practical suggestions about steps to take.

### What is bullying and harassment?

[Expandable headings]

#### + What is bullying?

There is no legal definition of bullying. However, bullying is generally regarded as persistent offensive, intimidating or humiliating behaviour, which attempts to undermine an individual or group of individuals.

#### **+ What is harassment?**

The Equality Act 2010 defines harassment as unwanted conduct related to a relevant protected characteristic that has the effect of creating an 'intimidating, hostile, degrading, humiliating or offensive environment' for the person being harassed or that violates their dignity.

It does not matter whether the harassment is intentional or not. What matters is that the person being harassed interprets the comments or behaviour as offensive, demeaning, disrespectful or unacceptable.

#### **+ What does bullying and harassment look like in practice?**

It is important to remember that there is no such thing as a stereotypical bully, or a stereotypical person who is bullied or harassed. Bullying and harassment can happen to anyone, at any stage of their career.

Bullying and harassment does not only involve a person in a position of power or seniority bullying someone less senior to them. You could be bullied or harassed by a manager or senior colleague in your firm. If you are a manager or senior colleague, you could be bullied or harassed by someone you manage or who is in a junior role to you. Costs Lawyers could also be bullied or harassed by their clients, other legal professionals or third parties.

Bullying and harassment can take many forms. It can be, for example, physical, verbal, emotional or financial. It can take place in person, online, in virtual meetings, on the phone, in writing, on social media and in other situations. Bullying and harassment can be an isolated, one-off incident, or a pattern of behaviour that occurs over a longer period of time.

Bullying and harassment can happen in the workplace or in other work-related situations, such as social events, client events, external meetings, conferences, in court, while travelling for work and other business contexts.

Bullying and harassing behavior can include, but is not limited to:

- shouting, threats and other abusive behaviour
- making offensive, demeaning or intimidating comments
- persistently and unjustifiably criticising someone's work
- persistently undermining someone's authority
- deliberately and unjustifiably excluding someone from meetings or events
- pressurising someone to act unethically

## **Your obligations**

[Expandable headings]

### **+ As a Costs Lawyer**

Principle 6 of the Code of Conduct requires Costs Lawyers to treat everyone fairly and equitably, and with dignity and respect. This includes clients, colleagues and other third parties.

As well as considering their own conduct, a Costs Lawyer should encourage any business of which they are a part to:

- commit to the promotion of equality and diversity and comply with legislative requirements
- have a written bullying and harassment policy which is appropriate to the size and nature of the firm, and which includes details of how complaints and disciplinary issues in relation to bullying and harassment will be dealt with
- provide employees and managers with appropriate training and information about bullying and harassment.

You must not engage in or facilitate counter-inclusive conduct or harassment which, intentionally or unintentionally, narrows or denies opportunities to people because of their background or characteristics (Principle 6 of the Code of Conduct). This duty includes taking action where you witness bullying and harassment taking place (see What to do if you witness another person being bullied or harassed below).

### **+ As an employer**

Costs Lawyers who are employers are expected to have - and adhere to - a written policy that prevents discrimination and harassment. Costs Lawyers who are employers are also expected to investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate. These obligations are reflected in Principle 6.3 of the Code of Conduct.

The CLSB does not regulate entities and therefore, other than the above, we cannot prescribe how firms that employ Costs Lawyers should handle bullying and harassment. However, we would expect organisations that employ Costs Lawyers to:

- Take allegations of bullying or harassment seriously, and investigate such allegations in a serious and sensitive manner.
- Proactively ensure that all staff understand how to recognise and deal with bullying and harassment.
- Develop a clear, consistent and accessible policy on bullying and harassment. This should include how to report bullying and harassment, who will handle complaints and the procedure that will be followed where an allegation is made. All complaints and investigations should be treated confidentially.

- Provide training and support resources for staff. This could include training on recognising bullying and harassment, active bystander training to equip staff to challenge inappropriate behaviour, and ensuring staff are aware of support services such as [LawCare](#).

## What to do if you are being bullied or harassed

If you are being bullied or harassed, it is important that you take steps to safeguard your own wellbeing and to stop the bullying or harassing behaviour. Your own wellbeing should be a priority. Consider talking to a trusted friend, colleague or mentor about the situation, or contacting services such as [LawCare](#), which offers free, confidential advice to legal professionals.

Practical information about steps you can take to address and report bullying or harassment is set out below.

[Expandable headings]

### **+ If you are being bullied or harassed by a colleague or another legal professional**

In this situation, you should check your employer's policies on how to deal with bullying and harassment. These policies should set out what steps you can take, and who to speak to for help. You may feel worried about the impact of making a report, however, doing nothing risks the bully being able to continue harming you and others.

You should keep a log of the bullying or harassing behaviour, including the times and dates of each occurrence. You can use online tools like [Talk to Spot](#) to record incidents, or keep a log on your phone or in a document on your computer.

You should also consider whether you need to make a report to the relevant regulator – for example, the Solicitors Regulation Authority, Bar Standards Board, CILEx Regulation or another approved regulator. Whilst notifying a regulator of your concerns may feel daunting, it is important to remember that not raising concerns with the relevant body at an early stage risks further harm being caused to you and others. For more information, see [Reporting ethical issues](#).

Complaints about a Costs Lawyer's professional conduct can be made directly to the CLSB. Costs Lawyers whose conduct falls below the expected standard in the Code of Conduct may find themselves subject to [disciplinary sanctions](#) by the CLSB.

### **+ If you are being bullied or harassed by your client**

Dealing with bullying or harassment by a client can be a particularly challenging situation. Costs matters can be highly emotional and stressful for clients, which can lead some individuals to act poorly, angrily or aggressively towards their advisors.

However, that does not mean that it is acceptable for a client to act in a way that amounts to bullying or harassment.

In this situation, you should check your employer's policies on how to deal with bullying and harassment. These policies should set out what steps you can take and who to speak to for help. You should always report the client's behaviour through the appropriate internal channels so that it can be dealt with.

You should keep a log of the bullying or harassing behaviour by the client, including the times and dates of each occurrence. You can use online tools like [Talk to Spot](#) to record incidents, or keep a log on your phone or in a document on your computer.

Despite the fact that your client's behaviour may be upsetting or aggravating, you should endeavour to remain calm and professional at all times. This is because you have a duty to act with integrity and to treat your clients with dignity and respect. Although it may be tempting to react in kind where a client is treating you in a way that is unacceptable, doing so risks breaching your own obligations under the Code of Conduct.

It is possible that your client does not realise the impact their behaviour is having on you or your colleagues. If you feel able to, you could try to explain to the client how their behaviour is coming across to you and ask them to change it. If this is not possible – or if your client refuses to adjust their behaviour after you or your firm have tried to address it with them – you should consider whether you wish to continue acting for them in the matter.

If your firm refuses to cease acting for the client, you could ask to be taken off the matter so that you no longer have to engage with the client yourself.

If you need to stop acting, you should take steps to do so in a way that promotes the best interests of your client, as required by Principle 3 of the Code of Conduct. Try to minimise the impact on your client to the extent possible, for example by ceasing to act at a stage of the matter that will allow them to seek another adviser with a minimum of cost and urgency. You should also inform your client of why you need to stop acting and what their options are, including changing their behaviour. You should put this information in writing so that everyone understands the position, and so you have a record of the reasons why you ceased acting if the client chooses to make a complaint.

If you need further advice about balancing your regulatory duties to your client against protecting your own wellbeing, you can [contact us](#).

#### **+ If you are being bullied or harassed by a judicial office holder**

The Judicial Conduct Investigations Office (JCIO) handles complaints about the individual conduct of judicial office holders. The JCIO can investigate any action that amounts to misconduct, including bullying and harassment, using offensive language,

loss of temper and other counter-inclusive behaviour. A complaint must be made within three months of the matter complained of, unless there are exceptional circumstances. Further information can be found on the [JCIO website](#).

## What to do if you witness another person being bullied or harassed

You might find yourself witnessing an incident of bullying or harassment while you are at work. You might also find yourself in a situation where a colleague comes to you with a concern about bullying or harassment – perhaps because they have been a victim themselves, or because they are concerned about someone else. In either situation, you should consider taking action.

If you witness another person being bullied or harassed, you could intervene in the situation directly if you feel able and safe to do so. When bystanders take action it demonstrates that disrespectful or bullying behaviour is not accepted by the wider workplace, and can prevent such behaviour recurring.

If you are not able to intervene in the situation directly, you should speak to the person being bullied or harassed afterwards to offer assistance. You should also record details of the incident as soon as possible, including the names of those involved, the time and location of the event, any other witnesses, what you heard and saw, and then report the incident.

If your firm has a bullying and harassment policy, you should encourage the person who has been bullied or harassed to follow it. You could also encourage them to speak to a trusted supervisor or mentor about the situation, and tell them about services that can help people who are facing bullying or harassment, such as [LawCare](#).

You might find that the person who is being bullied or harassed does not wish to report the incident or is worried about the impact of so doing. In this situation, you should consider speaking in confidence to your firm's HR team about the situation if you have one, or escalating the matter to a senior person at your firm. You should also consider discussing with a senior leader at your firm whether additional anti-bullying and harassment training and/or diversity and inclusion training for staff is needed.

Regardless of the situation you are facing, you should always consider your obligations under the Code of Conduct. If you are in doubt about what steps you should take, you should consider consulting a senior colleague. You can also [contact us](#) directly for assistance.

## Further resources

[LawCare](#)

[National Bullying Helpline](#)

[Talk to Spot](#)

[Acas - bullying at work](#)

[Acas - handling a bullying and discrimination complaint](#)

## **Whistleblowing**

### **Introduction**

One of the many issues raised by the [Post Office Horizon scandal](#) is the scope of a lawyer's professional, regulatory and ethical obligations to raise concerns about wrongdoing by their employer.

As a Costs Lawyer, you might find yourself in a situation where you become aware that your employer is involved in wrongdoing that will affect others. In this situation, it is likely that you will need to raise a concern about this internally, or externally to a regulator or another organisation.

Whistleblowing legislation provides certain protections for employees and workers who raise concerns in the public interest. Costs Lawyers, whether working in-house or in private practice, are protected by whistleblowing legislation as they will usually be employees or workers.

Costs Lawyers will usually have a contractual duty to act in the best interests of their employer. They also have obligations under the [Code of Conduct](#) to act in the best interests of their client and to maintain client confidentiality. However, Costs Lawyers also have wider obligations to act with honesty and integrity, and to promote the proper administration of justice and the rule of law. It is important to keep the public interest, and public perception of the profession, in mind at all times. This will be important when deciding whether, when and how to report a concern.

This topic note sets out your professional and regulatory obligations in this area. It also explains the steps you should take if you have a concern, and what protections are in place for whistleblowers.

### **What is whistleblowing?**

[Protect](#) defines whistleblowing as: "A worker raising a concern with someone in authority — internally and/or externally (e.g. to regulators, MPs, MSPs, the media) — about wrongdoing, risk or malpractice that affects others."

The [Public Interest Disclosure Act 1998](#) protects employees and workers from detrimental treatment by their employer for raising a whistleblowing concern.

The protections under the Public Interest Disclosure Act 1998 only apply if you make a "qualifying disclosure" in accordance with the Act. If you are thinking about raising a whistleblowing concern, you should consult the Act to ensure you will be making a qualifying disclosure. This will depend on factors such as the subject matter of the disclosure and who you make the disclosure to.



## What disclosures are protected?

Generally, you are protected under the Public Interest Disclosure Act 1998 if you make a report about any of the following, and you reasonably believe that making a disclosure about the matter is in the public interest:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged; or
- that information tending to show any matter above has been, is being or is likely to be deliberately concealed.

You can raise a concern at any time. Your concern can be about wrongdoing that happened in the past, wrongdoing that is happening now, or wrongdoing that you believe will happen in the near future.

You can also raise a concern about something that is taking place overseas.

## What disclosures are not protected?

Personal grievances (for example bullying, harassment, discrimination) are not covered by whistleblowing law, unless your particular case is in the public interest.

The disclosure of privileged information by lawyers is also expressly excluded from the protections under the Public Interest Disclosure Act 1998. Whistleblowing protections will therefore not normally extend to information provided by your client for the purpose of obtaining legal advice or conducting litigation, as this information will usually be protected by legal professional privilege. Whistleblowing within costs law firms and other types of law firms will therefore likely relate to the actions of people working within the firm, not its clients.

You should bear in mind that the legal protection offered to whistleblowers relates only to the activity of making a qualifying disclosure. It does not cover your conduct in obtaining the disclosed information or in the way you raise your concern. You should therefore ensure that you do not do anything unlawful or unethical in order to raise your concern, in line with your obligations under the Code of Conduct.

## How is whistleblowing different to regulatory reporting?

It is important to distinguish between whistleblowing and your duty to report ethical issues and disclosable events under the Practising Rules and Code of Conduct.

As a Costs Lawyer, you must tell us when you experience a disclosable event, and you must notify us of a breach of our regulatory rules by you or someone else. For more information, please see our advice on [Reporting ethical issues](#).

Whistleblowing concerns are different, because these will usually involve a situation where you are raising a concern and need protection for some reason – for example, because you are acting in breach of your employment contract by raising the concern externally.

It is also important to distinguish between whistleblowing and the requirements under general legislation to report certain information to other bodies or agencies. These include, for example:

- the requirement to make a suspicious activity report to the National Crime Agency pursuant to either the Proceeds of Crime Act 2002 or the Terrorism Act 2000 (for more information, see the Guidance Note on Economic Crime in the [Costs Lawyer Handbook](#));
- the obligation to report a personal data breach to the Information Commissioner's Office pursuant to the Data Protection Act 2018.

## What are your obligations?

As a Costs Lawyer, you must act in line with your duties under the Costs Lawyer Code of Conduct at all times.

You have professional obligations to:

- act honestly and with integrity (principle 1.1);
- act independently in the interests of the proper administration of justice (principle 1.1a);
- not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers (principle 1.7); and
- at all times, act within the law (principle 2.1).

If you become aware that your employer or someone in your organisation is acting improperly or involved in wrongdoing – or is intending to act or become involved in wrongdoing – you should raise your concerns with them directly and advise them of the risks and implications of their actions. This is in line with your duties outlined above.

If no action is taken as a result of you raising your concerns – for example, if the person involved chooses to ignore your concerns – you should consider escalating your concerns to a more senior person in your organisation.

If addressing the issue with the person involved or your employer directly does not resolve your concern, you will need to consider whether you can continue working for your organisation and still meet your regulatory obligations and duties.

Depending on the circumstances, you may also have an obligation to make a report to an external regulator, law enforcement agency or another organisation. Please see our advice on [Reporting ethical issues](#) for more information. Note that your obligation to consider whether you need to make a report to an external authority continues even if you decide that you are unable to continue to work for your employer.

Regardless of whether or not you need to make an external report about the matter, you should record the action you have decided to take together with your reasons. This will help to demonstrate that you have acted with independence, honesty and integrity.

## How can you raise a whistleblowing concern?

[Expandable headings]

### **+ Raising a concern with your employer**

As set out above, there is a difference between whistleblowing and your duty to report ethical issues and disclosable events under the Practising Rules and Code of Conduct. As a Costs Lawyer, you must tell us when you experience a disclosable event, and you must notify us of a breach of our regulatory rules by you or someone else. For more information, please see our advice on [Reporting ethical issues](#).

If you need to raise a whistleblowing concern, the starting point will usually be to raise it with your employer. Disclosures made to your employer will qualify for whistleblowing protections (assuming they meet the other criteria in the Public Interest Disclosure Act 1998).

If your employer has a whistleblowing policy, you should follow the procedure set out in that policy.

If your employer does not have a whistleblowing policy, you should still try to raise your concern internally. The fact that your employer does not have a whistleblowing policy does not negate your obligation to raise concerns; it simply means that you should consider alternative channels for doing so.

You might find yourself in a situation where it is not possible, or appropriate, to raise or escalate concerns with your employer. For example, because your concern is time-critical, or your employer or senior leadership is directly involved in, or responsible for, the wrongdoing. In this situation, you should consider whether you need to make a report to an external regulator, law enforcement agency or another organisation.

### **+ Raising a concern externally**

There are various external organisations that you can contact regarding a whistleblowing concern. The procedure you need to follow depends on the organisation you are contacting – each has its own channels and procedures for handling whistleblowing concerns.

You can raise a concern with an external body at any stage, you do not have to raise your concern with your employer first. However, you should raise your concerns internally first if you can. This is likely to be the most effective way of addressing your concern quickly.

#### *Another person or organisation that is responsible for the wrongdoing*

Where the issue causing concern is the responsibility of a person or organisation other than your employer, you can raise your concern directly with them. For example, if a contractor is carrying out work on site at your firm and you notice a serious health and safety breach, you can raise your concern with that person. This is a legitimate way to make a qualifying disclosure under the Public Interest Disclosure Act 1998.

#### *Prescribed person or body*

You can make a report to a [prescribed person or body](#) that can deal with the concern you are raising, such as a government body, auditor, regulator or law enforcement agency. For example, concerns about data protection can be raised with the Information Commissioner. You can also raise a concern with a Member of Parliament, as all MPs are prescribed persons.

The [Public Interest Disclosure \(Prescribed Persons\) Order 2014](#) sets out the list of prescribed persons that an individual may approach (outside of their employer) to report wrongdoing, risk or malpractice.

You should take care to identify the correct prescribed person for your concern, because your disclosure will only be protected if you raise a concern that is within that body's remit. If you are unsure about which prescribed person to make your disclosure to, you can contact [Protect](#) for advice.

You can make a report to a prescribed person or body on an anonymous basis, or request that your name is kept confidential.

#### *Government ministers*

If you work for a statutory body, government-appointed organisation or a non-departmental public body, you can make a disclosure to a government minister, either directly or through their officials.

#### *Another person or body*

If your concern relates to an "exceptionally serious failure", you can consider making a disclosure to another person or body other than those listed above, for example, law enforcement or the press. There is no statutory definition of what would constitute an "exceptionally serious failure". If you are considering raising a whistleblowing concern in this way, you should consider seeking independent legal advice.

In this situation, you will need to have a reasonable belief that the information you are disclosing is substantially true, and need to show that you are not disclosing the information for personal gain.

You will also need to show that the disclosure was reasonable in all the circumstances, in line with the conditions set out in the Public Interest Disclosure Act 1998.

Raising a concern to the media should be treated very carefully, and is only likely to be the most appropriate way of addressing your concerns in rare and exceptional circumstances. If you are considering this course of action, you should contact Protect or seek independent advice in order to determine whether this is the best course of action.

#### *A legal advisor*

You may wish to seek independent legal advice about raising a concern. You can do this at any time. Disclosures made in the course of seeking legal advice are protected under the Public Interest Disclosure Act 1998.

You can also contact whistleblowing charity [Protect](#), which offers free legal advice.

#### **+ In all situations**

If you are contemplating disclosing information as a whistleblower, you will need to consider whether the wrongdoing that you are concerned about falls into one of the categories of qualifying disclosures under the Public Interest Disclosure Act 1998 (see above under *What disclosures are protected?*).

You will also need to consider whether and when to report the matter to the police and any relevant regulatory bodies. This is likely to depend on the outcome of your initial whistleblowing disclosure.

You should keep a written note of the action you take, your reasons for doing so, who you spoke to and their response.

In practice, every situation will have unique characteristics and you must decide how to meet your professional and ethical obligations on a case by case basis. This means that you must exercise professional and situational judgement, and give consideration to any ethical issues at hand, when considering how to act.

Regardless of the situation you are facing, you should always consider your obligations under the Code of Conduct, and ensure that you are familiar with the Guidance Notes in the [Costs Lawyer Handbook](#) and any relevant advice in the [Ethics Hub](#).

If you are in doubt about what steps you should take, you should consider speaking to [Protect](#). You can also [contact us](#) directly for assistance. While the CLSB is unlikely to be the appropriate recipient of whistleblowing disclosures (as we do not regulate entities/employers), we will support any Costs Lawyer who is looking to raise a concern in good faith.

## How do the protections apply to lawyers?

Costs Lawyers, whether working in-house or in private practice, are protected by whistleblowing legislation as they will usually be employees or workers. This means that you have a right to not be dismissed or suffer detriment if you make a qualifying disclosure under the Public Interest Disclosure Act 1998.

However, whistleblowing protection does not apply if the information you disclose is subject to legal professional privilege. Protect provides detailed [information](#) about how the whistleblowing legislation applies to solicitors. Given the close alignment between the Costs Lawyer and solicitor professions, the information will be relevant and helpful for Costs Lawyers.

## Further resources

[Whistleblowing for employees](#) (gov.uk)

[SRA reporting obligations](#) (relevant to Costs Lawyers working in SRA-regulated firms)

[SRA draft guidance - reporting concerns about wrongdoing when working in-house \(1 March 2024\)](#) (relevant to Costs Lawyers working in SRA-regulated firms)

[CILEx Regulation - Whistleblowing](#) (relevant to Costs Lawyers working in CILEx-regulated firms)

[Protect](#) is the UK's whistleblowing charity, providing free and confidential advice to support whistleblowers in reporting wrongdoing in the workplace. You may find their [practical and legal checklist for whistleblowers](#) helpful.

[Acas – Whistleblowing at work](#)

## Draft for board approval (October 2024)

### To be presented as web content on the Ethics Hub

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## Presenting information to, and interacting with, the court

### Introduction

Recent high profile cases, such as the [Post Office Horizon litigation](#), have drawn attention to professional ethical conduct in court. The [Legal Services Board](#) has highlighted the misuse of non-disclosure agreements and Strategic Lawsuits Against Public Participation (SLAPPs) as areas of concern, while the Solicitors Regulation Authority's 2018 report, [Balancing Duties in Litigation](#), identified several types of improper or abusive litigation, including predatory litigation against third parties, excessive or aggressive litigation, and knowingly conducting unwinnable cases.

These issues are relevant to two of the three reserved legal activities that regulated Costs Lawyers may carry out, namely the right to conduct litigation and the right of audience.

As a Costs Lawyer, you have duties and obligations in relation to your dealings with the court and how you conduct litigation, which are reflected in the Costs Lawyer [Code of Conduct](#). You also have duties to your client and third parties, as well as a duty to promote the proper administration of justice and the wider public interest.

Because of your dual duties to the court and your client, you may find yourself in a situation where your duty to your client appears to conflict with your duty to the court, or vice versa. In these situations, you will need to consider how to balance these duties.

This topic note sets out your obligations in relation to presenting information to, or otherwise interacting with, the court. It also highlights the factors you will need to consider in a situation where your duty to the court appears to conflict with your duty to act in the best interests of your client, or with another of your professional obligations.

### Why is this important?

Costs Lawyers help to uphold the rule of law and promote the proper administration of justice through their advocacy and litigation work. By consistently upholding high standards of ethics and professionalism in court, Costs Lawyers earn the trust and confidence of the court itself, their clients, the wider public, and other branches of the legal profession.

Costs Lawyers whose conduct falls below the expected standard may find themselves subject to a complaint or disciplinary sanctions by the CLSB. As set out in our [policy statement on enforcement and sanctions](#), the CLSB is primarily concerned with taking enforcement action against serious breaches, not those which are merely trivial. Behaviour involving dishonesty, lack of integrity or significant harm to consumers, or

posing a high risk to the public interest, the reputation of the profession or the administration of justice, will always be serious. Misleading the court – particularly where this is done deliberately or recklessly – is likely to fall into one or more of these categories of behaviour.

In the most serious cases, Costs Lawyers may find themselves facing charges such as contempt of court or perjury if they breach their duties to the court.

## Duties to the court

As a Costs Lawyer, you are an officer of the court. This means you have duties in relation to the court itself, your dealings with the court, and your behaviour during the conduct of litigation and disputes. These duties are set out in Principle 2 of the Code of Conduct.

Your duties include ensuring that you act within the law at all times, ensuring that you do not mislead the court, and ensuring that you comply with court orders. More information about each of these duties and how to meet them is set out below.

[Expandable headings]

### **+ Acting within the law at all times**

You should ensure that you act within the law at all times. This is a key component of acting with integrity, and fundamental to the proper administration of justice.

In the context of your dealings with the court, this means that you should not make submissions that you know are contrary to legislation or court orders. You should also make the court aware of relevant cases, legislation and authorities that are likely to have a material impact on the outcome of the proceedings, as well as any procedural irregularities of which you become aware. You should also ensure that you act in accordance with your legal and regulatory obligations at all times.

### **+ Not misleading the court**

It is vital that information provided to the court is accurate and reliable. This is crucial to the smooth conduct of proceedings, efficient allocation of public resources, and the proper administration of justice. Your duties to the court in this regard include:

- not knowingly or recklessly misleading the court;
- not attempting to mislead the court; and
- not allowing the court to be misled by another (which includes not being complicit in your client or anyone else misleading the court).

### **+ If you have misled the court**



If you become aware that you have inadvertently misled the court yourself, you should inform the court immediately and take steps to rectify the error. You should also consider whether the breach, once remedied, is sufficiently serious to warrant reporting to the CLSB. For more details, see our resources on [reporting ethical issues](#).

#### **+ If your client has misled the court**

If you become aware that your client is misleading – or intends to mislead – the court, you should advise them to cease doing so. If your client continues to mislead the court, for example when giving witness evidence, you should remind your client of your duties to the court and the proper administration of justice. You should also consider whether you are able to continue acting for your client without breaching your professional obligations.

If you discover that your client has misled the court during the course of litigation, you should make the court aware of this and take steps to rectify the error immediately. Whilst this course of action could have difficult consequences for your client, the alternative is for you to breach your professional obligations and risk facing sanctions yourself. Deliberately concealing such information would be treated particularly seriously by the CLSB.

You might need to consider whether your client's information is confidential, privileged or otherwise sensitive in this context (see further below).

#### **+ If a third party has misled the court**

If you become aware that another legal professional or a third party is misleading the court, you should raise this with them directly and advise them to correct this situation. If they do not do so themselves, you should make the court aware of the situation.

You should also consider whether you need to make a report to the relevant approved regulator if you become aware that another legal professional has misled the court. Whilst notifying a regulator of your concerns may feel daunting, it is important to remember that not raising concerns with the relevant body at an early stage risks further harm being caused, and potentially breaches your own professional and ethical obligations. For more information, see our resources on [reporting ethical issues](#).

#### **+ Suspicions of misleading information**

If you do not actually know, but have a *suspicion*, that your client, another legal professional or a third party is misleading the court, you should take steps to verify the information provided where appropriate, or otherwise act to allay your suspicions. You should not simply do nothing. Turning a blind eye to a suspicion that information is incorrect or misleading, which later turns out to be the case, is likely to be treated in a similar way to knowingly misleading the court.

## **+ Confidential, privileged and sensitive information**

You should bear in mind that misleading information may be covered by legal professional privilege (either legal advice privilege or litigation privilege). Legal professional privilege protects communications from disclosure, even in court.

Therefore:

- if your client has provided misleading information to the court; and
- if your client does not rectify this or agree to you rectifying this; and
- if by informing the court about the misleading information, you would disclose a privileged communication without your client's permission,

then it is likely that you will not be able to continue acting for the client without being in breach of your professional duties.

There may also be situations in which the misleading information is not protected by privilege, but is confidential, commercially sensitive or otherwise sensitive. Principle 7 of the [Code of Conduct](#) requires you to keep the affairs of your client confidential. There are also obligations of confidence arising in general law and under court orders in certain types of cases.

If you can make the court aware of the misleading information in a way that protects confidentiality, you should do so. However, the fact that information is confidential should not deter you entirely from acting when it is appropriate to do so. Whilst a balancing exercise is required to consider where the public interest lies, and in balancing your own professional and ethical duties, there is a clear public interest in ensuring the proper administration of justice.

## **+ Other duties to the court**

You also have duties to:

- comply with any court orders that place an obligation on you;
- not be in contempt of court; and
- support the proper administration of justice by promoting the appropriate and cost-effective use of the resources of the court and the parties.

You should also ensure that you do not act in situations where you have a [conflict of interest](#) that cannot be resolved.

## **Duties to your client**

As well as duties to the court, you also have duties to your clients.

Principle 3 of the Code of Conduct states that you must act in the best interests of your client at all times, except where this conflicts with your duty to act independently in the interests of the proper administration of justice or where otherwise permitted by law.

However, acting in the best interests of your client does not mean that it is your role merely to carry out your client's instructions without question. It is important to remember that Principle 1 of the Code of Conduct states that you must act independently in the interests of the proper administration of justice. This duty overrides your duties to your client and applies both to your work before the court, in advising clients, and in conducting litigation.

You must ensure that clients understand when your duties to the court will override duties owed to them, and you must advise clients to comply with court orders made against them (Principle 2 of the Code of Conduct).

If your client instructs you to do something that would frustrate the proper administration of justice – for example, presenting misleading or inaccurate information – you should inform your client of your duties to the court and the wider public interest, as well as your general duty to act ethically. If your client insists on instructing you to do something that would be a breach of your duties to the court, you should consider whether you need to withdraw from representing them. You might find the CLSB guidance note on [client confidentiality and acting with integrity](#) helpful when considering this situation.

## Duties to third parties

You have a duty to treat everyone you work with – including clients, colleagues, and third parties – fairly and with dignity and respect. This is reflected in Principle 6 of the Code of Conduct and applies to all of your dealings with others, including during litigation.

There is a difference between robustly representing your client and being aggressive, and there is never any excuse for intimidating, bullying or harassing behaviour. Your conduct in litigation affects how you – and the Costs Lawyer profession – are perceived by third parties and the public, and you should therefore ensure you act with integrity, professionalism and courtesy at all times.

When representing your client, you should ensure that you treat all parties involved in the case fairly and respectfully. You should not take advantage of the other side or any third parties involved in any way. This applies particularly to unrepresented parties or vulnerable parties, who may have less experience of legal proceedings.

You should also ensure that you do not act aggressively towards any other parties. Behaviour that could be considered aggressive includes, but is not limited to:

- Asking questions or making statements simply to annoy, insult, intimidate or humiliate another person.
- Making submissions, statements or representations to the court or others that are not properly arguable.

- Making allegations that do not have legal merit – either deliberately or recklessly – to try to pressurise or influence another person.
- Making exaggerated claims about the costs or consequences of a particular course of action.
- Taking on, or defending, cases that have a weak chance of success without clearly explaining the potential risks and costs to your client.
- Being overly aggressive or excessive in correspondence with others, for example by using language designed to sound intimidating or threatening or being excessive in the amount or type of correspondence.
- Threatening to report a colleague to their regulator or another body for improper reasons, or to try to influence their behaviour in proceedings.

## Improper and abusive litigation

An [SRA paper](#) on balancing duties in litigation identified the following types of improper or abusive litigation:

- predatory litigation
- predatory litigation involving clients
- abuse of the process
- taking unfair advantage
- misleading the court
- excessive or aggressive litigation
- conducting knowingly unwinnable cases

Conducting litigation that is excessive, aggressive or predatory, or knowingly conducting cases that have limited chances of success, risks damaging public confidence in the legal system. It is also not an appropriate and cost-effective use of public resources, and is therefore likely to breach your obligations under Principle 2 of the Code of Conduct (specifically, Principle 2.5). Conducting such litigation also risks attracting negative publicity and damaging your professional reputation.

If your professional opinion is that your client has limited chance of succeeding in their matter, you should advise them accordingly. This is in line with your duty to act in the best interests of your client, and with your duty to promote the appropriate and cost-effective use of court and litigant resources.

If you believe that your client is seeking to bring litigation that is predatory, aggressive or excessive, you should discuss this with them. Whilst you have a responsibility to act in accordance with your client's instructions, you cannot use this as a justification for pursuing improper or abusive litigation.

You should ensure that you have thoroughly interrogated and considered the legal and evidential merits of the course of action your client wishes to pursue, and your duties to the court, the administration of justice and the rule of law. If your client insists on pursuing litigation or a course of action that is – in your professional opinion – improper, unjustified or unarguable, you should consider whether you are able to continue acting for them or whether you should withdraw from the case.

## Balancing your duties

In practice, every situation will have unique characteristics and you must decide how to meet your professional and ethical obligations on a case by case basis. This means that you must exercise professional and situational judgement, and give consideration to any ethical issues at hand, when considering how to act.

Ultimately, if your client's instructions conflict irreconcilably with your professional duties and ethical obligations, you will need to consider whether you are able to continue representing your client or whether you should withdraw.

Regardless of the situation you are facing, you should always consider your obligations under the Code of Conduct, and ensure that you are familiar with the Guidance Notes in the [Costs Lawyer Handbook](#). If you are in doubt about what steps you should take, you should consider consulting a senior colleague. You can also [contact us](#) directly for assistance.

# Two-year review of Disciplinary Rules and Procedures (DR&P)

Board update

October 2024

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## Background

Priority 7 in our 2024 Business Plan is to:

*Carry out the next two-year review of changes to the Disciplinary Rules and Procedures, looking at second tier complaints handled during the review period as well as any good practice examples or learnings from our or other regulators' work.*

We undertook this review in early 2024, by examining all second tier complaints handled during the two years since the latest changes to the Disciplinary Rules and Procedures (DR&P) were implemented.

During that period, no complaints were heard by a Conduct Committee or Conduct Appeal Committee, and no interim suspension orders were imposed. We were therefore unable to test those aspects of the DR&P in practice.

Throughout the year, we have also participated in discussions with other regulators about their disciplinary rules in the context of contributing to the LSB's emerging principles for effective disciplinary and enforcement processes.

Taking learnings from complaints handled during the period, as well as learnings from our wider work and that of other regulators in 2024, the review has yielded four recommendations for the ongoing improvement of our disciplinary processes. These are summarised below.

## Recommendations

### 1. Improved board reporting on complaints

There has been an increase in both the number and complexity of complaints about the conduct of Costs Lawyers received by the CLSB over the period of the review. This in turn means an increase in consultancy payments for the investigation of complaints, as well as improved data from which we can identify and respond to trends.

The first recommendation is therefore to provide the board with an annual roundup of complaints received by the CLSB. This is intended to give the board oversight of:

- complaint volumes, which is associated with the cost of handling complaints;
- complaint outcomes, as an indicator of the effectiveness of our processes; and
- themes and trends in complaints over time.

We began this reporting in April 2024, following our review of complaints as described above. The first report included data on the nature of each complaint and complainant, the relevant CL's practising arrangements, the way the complaint was handled, the outcome, the timeframe and the cost.

**2. Improved reasonable adjustments policy**

There is reference in the DR&P to making reasonable adjustments where necessary. However, there is no detailed policy that sits behind this provision, nor any mechanism to ask for (or identify a need for) reasonable adjustments to be made.

While we did not deal with any complaints during the review period that required making reasonable adjustments, this was identified as a gap in our processes that could be improved.

We have therefore included the development of a reasonable adjustments policy as a priority in our 2025 Business Plan. We will use this as a platform to look at reasonable adjustments more broadly, not just in relation to disciplinary proceedings but in relation to all our interactions with individuals. We will also develop guidance for Costs Lawyers on reasonable adjustments in the workplace as part of our EDI agenda, building on our general EDI guidance developed in 2024.

**3. Addressing neurodivergence**

Other regulators, including those outside the legal sector, have begun to consider the impact of neurodivergence in the disciplinary space, including:

- the need for reasonable adjustments to accommodate neurodivergence;
- neurodivergence as a mitigating factor in conduct complaints; and
- the intersection between neurodivergence and competency.

This is an area we will explore in 2025, looking at whether our processes or guidance should be adjusted preempt some of the challenges that are arising elsewhere.

**4. Engagement with the LSB's new policy tool**

In 2024, the LSB has been progressing a workstream to develop a set of principles for effective disciplinary and enforcement processes. We understand that this will result in the publication of a policy tool, although the LSB has not yet determined what form this will take.

We will continue to engage with this work until the LSB's policy tool is published in 2025. Following publication, we will review the DR&P and our associated infrastructure against the expectations in the statement. Work toward the three recommendations above will help to ensure we are in a good place to meet best practice standards.



## LSB statement of policy on empowering consumers

### CLSB response to LSB information request

18 September 2024

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#### Introduction

1. This document is the CLSB's response to a letter dated 17 June 2024 from Richard Orpin seeking assurance that the CLSB is meeting the expectations in the LSB's statement of policy on empowering consumers (the Statement). We believe that we are meeting all the LSB's expectations, for the reasons set out in this response.
2. The Costs Lawyer profession serves very few clients that could be categorised as consumers or small businesses, and there are very few consumer-facing services offered by regulated Costs Lawyers. Since the Statement was published in April 2022, the CLSB has given extensive thought to how it can promote the LSB's objectives and meet the LSB's expectations in a way that is proportionate and targeted, given the predominantly business-to-business nature of the services provided in our part of the legal sector.
3. The LSB and CLSB have had numerous helpful discussions about this over the last two years, in order to agree an effective approach. We appreciate that those discussions were held with Matthew Hill, Chris Nichols and our former relationship manager Steve Violet, all of who have now left the LSB. For that reason, this document sets out our approach in more detail than we might otherwise have included, but we hope this is helpful for current LSB colleagues.

#### Our approach to meeting the outcomes and general expectations in the Statement

4. As noted in Richard's letter, the regulators must take into account the principles outlined in the Statement when deciding how to meet the outcomes. In particular, the regulators need to adapt their approach to (i) address the needs of individuals and small businesses, and (ii) suit the characteristics of their regulated profession or specific practice areas within it.
5. With this in mind, we developed an approach to compliance that is bespoke to the profile of our regulated profession and its clients. We began to work up the approach in July 2022, through submission of a short paper to the LSB in advance of an MTCOG meeting at which the Statement was first discussed. The paper explained our proposed approach as follows:

*Since the LSB published its policy statement on empowering consumers, the CLSB has published its report [How could Costs Lawyers reduce the costs of legal services?](#)*

*Our report sets out a comprehensive picture of the services that Costs Lawyers provide, how these have shifted over time, and how these are likely to continue to evolve in the future. It also provides an assessment of services provided by regulated and unregulated costs professionals.*

*There are some important findings relevant to how the CLSB should implement LSB policies aimed at protecting individual consumers. These are, in summary:*



- *Costs Lawyers rarely serve individual consumers;*
- *regulated Costs Lawyers and unregulated Costs Draftsmen work on very similar activities;*
- *it seems unlikely that Costs Lawyers will become involved in the growth area of Solicitor-Own costs but there is a concern amongst Costs Lawyers that growing claims of this nature may well end up being handled by providers to whom no ethical rules or client protections apply.*

*The CLSB is fully supportive of the LSB's policy aims to protect consumers with measures that encourage competition and empower consumers to shop around. But against the backdrop set out above, with the evidence detailed in our recent report, it is highly likely that devoting a substantial amount of CLSB regulatory resources to implementing ex-ante regulation aimed at protecting individual consumers would be wasteful and, potentially, harmful.*

*Imposing ex-ante regulation aimed at protecting individual consumers on a sector that rarely serves them and where most providers are able to continue in business without being regulated at all will, most likely, have the impact that regulated Costs Lawyers will decide not to serve individual consumers at all. This means the individual consumer clients that there are would be pushed into the unregulated space, which may not be problematic, but isn't a desirable return for scarce regulatory resources.*

*We would like to put forward an alternative plan of action for the CLSB, which is fully in line and supportive of the LSB's principles set out in its statement.*

*In line with principle b) in the LSB's statement (regulators regulate different professions within the legal services sector, and, as a consequence, may adopt different approaches to meeting the general and specific expectations) we consider we can best address the findings of the CMA's market study by looking at how general consumer protection legislation applies to legal services provided by Costs professionals serving individual consumers.*

*While the CLSB is not an enforcer of general consumer protection legislation, it happens to have a team with an enormous amount of experience in doing so. Our CEO can draw on extensive experience advising Which?, and our Director of Policy previously ran all of the OFT's consumer protection activities.*

*By directing our efforts in this way, we can set out our expectations for regulated Costs Lawyers - in the event that they do serve individual consumers - and, of course, general consumer protection legislation also applies to unregulated providers. While the CLSB cannot, of course, take action against unregulated providers, so any action would have to be taken by others, we would be actively addressing a potentially emerging regulatory gap, and in our view meeting the LSB's over-arching principles while using our resources in the most productive way.*

*If the LSB is in agreement with our proposal, we suggest that an appropriate way forward would be for us to devise and submit an action plan that is in line with the results of the upcoming MTCOG meeting and the timescales for others to implement the LSB's empowering consumers policy statement.*

*We would like to emphasise once again that we are fully supportive of the LSB's policy aims, committed to the importance of empowered and informed consumers in legal services, and our suggestions are aimed at using the resources we have to contribute in the best way possible to the outcomes the LSB is seeking.*

6. In October 2022, following further engagement with the LSB, we formalised our action plan (as proposed) and included it in our submission for the 2022 regulatory performance assessment. We explained the plan as follows:

*Evidence from the [RPF project](#) suggests that Costs Lawyers serve very few individual clients (consumers or businesses). Relevant findings in the project report include the following points:*

- The vast majority of Costs Lawyers who are not employed in solicitors' firms work for professional clients, either under instruction by solicitors' firms or sometimes barristers' chambers, rather than providing services directly to end-clients.*
- There is little on offer from Costs Lawyers that is explicitly consumer facing. Less than one fifth of Costs Law firms advertise services directly to individuals or Litigants in Person (LiPs). In the latter case, further investigation suggests that this most frequently takes the form of advice about how to reduce a bill but without taking on the representation of that individual.*
- This seems to reflect the wider costs law market where there are few obviously consumer facing services on offer.*

*This means that the vast majority of Costs Lawyers' instructions come from professional intermediaries who are sophisticated, usually repeat purchasers of Costs Lawyers' services. These expert buyers do not face the same kind of information asymmetry or power imbalance as an individual consumer who is purchasing legal services.*

*The LSB's policy statement is naturally aimed at promoting competition across legal services offered to individual consumers and improving consumer protection, reflecting the scope and findings of the CMA's market study review. We appreciate that aspects of the policy statement are relevant to all purchasers of legal services – including expert purchasers – such as ensuring that information about a practitioner's disciplinary record is published and accessible. These aspects of the policy statement have either already been implemented by the CLSB or are in the late stages of implementation. We are not referring to those aspects in relation to this "gap". Rather, we are referring here to aspects of the policy statement aimed at protecting individual consumers and helping them make informed choices; aspects which are not intended to apply to expert purchasers.*

*Given the above, we believe that the CLSB needs to tackle the following challenge:*

*The CLSB must find a way to deliver appropriate regulatory oversight of the small minority of Costs Lawyers who provide services directly to individual consumers, including for the purpose of implementing the LSB's consumer-focused policy requirements, without imposing unnecessary regulation or unjustified cost on those Costs Lawyers who don't serve individual clients.*

*To achieve this, we propose to adopt a targeted, bespoke approach to regulating Costs Lawyers who provide B2C services. Our approach will involve identifying each of those Costs Lawyers and devising a regulatory framework that will apply only to them, alongside our usual regulatory arrangements (a "B2C regulatory framework", as a working title).*

**Step 1: Identification.** *First we need to know which Costs Lawyers provide or intend to provide (or market or intend to market) B2C services. To do this, we have introduced a new section in the 2023 PC renewal application form asking Costs Lawyers the following question, which should give us a better indication of the number of practitioners that provide B2C services by the start of next year:*

## Consumers

**Do you intend to provide services directly to, or market your services directly to, consumers in the 2023 practising year?**

What is a consumer?

"Directly" means instructions you receive from the consumer themselves, not from a solicitor, other professional, or intermediary acting for the consumer.

**What percentage of your workload do you expect will come from direct consumer instructions in 2023, based on previous experience?**

Please note that additional regulations (including in relation to fair contracts, pricing transparency and complaints procedures) apply if you provide or promote services directly to consumers.

**Step 2: Develop and socialise the B2C regulatory framework.** During 2023, we will work up a package of rules and guidance that will form the B2C regulatory framework. The framework will draw in some of our existing regulatory arrangements – such as our guidance on price transparency, reference to ADR schemes in complaints procedures etc – supplemented by the principles of general consumer protection law, tailored to the costs profession. Those principles are drawn from primarily:

- the Consumer Rights Act 2015, covering unfair contract terms and remedies for sub-standard provision of services;
- the Consumer Protection from Unfair Trading Regulations, covering misleading acts and omissions;
- the Consumer Contracts Regulations, covering information that must be provided to consumers during the transactional journey.

It is important to note that Costs Lawyers who provide services directly to consumers are already subject to such laws, as are unregulated costs draftsmen. However, awareness of these rules is likely to be limited. We see our role, therefore, as being to educate a subset of the Costs Lawyer profession about their legal obligations to individual clients, while also creating a roadmap for unregulated providers to follow.

We will finalise the B2C regulatory framework by Q3 of 2023, so that we can point to it prominently in the practising certificate renewal form for 2024. This will allow us to significantly enhance the existing note – shown at the bottom of the screenshot above – which now simply says that additional regulations apply to those providing or promoting services directly to consumers.

**Step 3: Decide how to supervise compliance going forward.** Depending on the number of Costs Lawyers who indicate in their practising certificate renewal application that they intend to directly serve consumers, we can then decide how best to supervise compliance in that part of the profession. Options range from incremental adjustments (such as a new supervision framework) to wider structural changes (such as practising certificate endorsements for different types of work/clients). These options were discussed by the CLSB board at its meeting in October, and the relevant extract from the draft board minutes is at Annex 8 (the full draft minutes will be published in the next week following approval by the Chair).

*We believe that the potential benefits of doing this work are manifold, including that:*

- It will help us to implement quickly and effectively any future LSB initiatives with a focus on consumer protection or consumer choice, as we will have a ready-made forum to house and promote new interventions that are relevant only to a small minority of practitioners.*
- We will know where to target our supervision and monitoring activities for B2C transactions.*
- If there is a higher than expected number of Costs Lawyers indicating they intend to provide services directly to consumers, this will help us track that trend and educate Costs Lawyers about their obligations.*
- It will provide us with a B2C regulatory framework that, for the most part, will apply equally to regulated and unregulated costs advisers. If we can promote this in the unregulated sector, it could help to bridge the regulatory gap identified in the RPF project findings.*

*We have discussed this proposed approach with colleagues at the LSB on several occasions as our thinking has developed, and we are grateful for the feedback provided. We want to emphasise that this approach is about finding the most appropriate mechanism – based on evidence and considered policy development – for implementing the policy statement in our part of the sector. The majority of the policy statement has already been implemented through our existing regulatory arrangements. Our work in this area will ensure full compliance.*

### Implementing our approach

7. Work on “Step 1”, as described in the plan above, was completed during our practising certificate renewal round in November and December 2022, by identifying which Costs Lawyers provide or intend to provide (or market or intend to market) B2C services. In summary, of the 661 Costs Lawyers who renewed their practising certificate for 2023, 66 (10%) indicated that they intended to provide or market services to consumers. This rose to 76 the following year. However, amongst this cohort, the percentage of their workload that they expected to come from direct consumer instructions was very low, as shown by the 2023 data (by way of example) in the table below.

Percentage of workload expected from consumers in 2023	Number of Costs Lawyers
50%	2
30%	1
25%	1
20%	2
10%	15
5%	18
2.5%	1
2%	8
1%	11
0%	6

This means that, of the expected total workload of all regulated Costs Lawyers in 2023, just 0.7% was anticipated to come from direct consumer instructions.

8. We identified and reached out to the individual Costs Lawyers whose expected workload from consumer instructions exceeded 5%, to gather information about what kind of work this was likely to be (e.g. solicitor-client disputes, specialist family or criminal proceedings, personal injury) and

what type of clients they expected to instruct them (e.g. self-represented litigants, small businesses) in order to inform the content and presentation of the B2C regulatory framework.

9. The B2C regulatory framework was then developed in 2023, in line with “Step 2” described above. It was first published as a PDF guide in time for PC renewals in November 2023. It is now available as either a downloadable PDF or navigable web content from its own webpage, entitled [Dealing with consumers](#).
10. The purpose of the framework is described as follows: *“The guidance in these pages is intended to help Costs Lawyers recognise their obligations under consumer law and how these relate to their regulatory duties as Costs Lawyers. It is also intended to help ensure any clients, or potential clients, who are consumers are dealt with fairly and in line with their consumer rights.”* The framework covers, amongst other things:
  - advertising and promotional materials;
  - pre-contractual information;
  - cancellation rights;
  - unfair contract terms;
  - obligations while performing services; and
  - ADR and complaint handling.
11. During 2024 we took steps to socialise the framework with its target audience, including through our news and social channels, and by direct email to the group of Costs Lawyers who self-identified as serving consumer clients. Our direct communications received particularly positive feedback, with several practitioners responding to say they found the web content helpful.
12. “Step 3” of our approach, as described above, relates to supervision going forward. We have updated the PC application form for 2025 (which will be submitted by Costs Lawyers in November 2024) to inform practitioners that we will begin supervising compliance with the framework from next year.
13. The CLSB board considered the option of implementing practising certificate endorsements for different types of work/clients, but ultimately felt that the risk of disincentivising Costs Lawyers from acting for individual consumers outweighed any potential regulatory benefits of that approach. We will therefore introduce a new Supervision Framework for B2C services, which will sit beneath our overarching Supervision Policy and alongside existing Supervision Frameworks for CPD, complaints procedures and so on (available [on our website](#)).
14. The Supervision Framework will apply from 2025, once the B2C framework has bedded in and following notice to the profession in this year’s PC application form. It will involve two key elements: (i) an annual survey of Costs Lawyers who provide consumer services, gathering data about those services as well as self-evaluation of compliance with the B2C regulatory framework; and (ii) an annual check of a selection of firms’ websites for relevant pre-contractual information. The fact that we do not regulate entities makes it more challenging to tackle poor practice in relation to websites, but there are influencing levers we can use to raise standards in this area where possible.
15. We have also discussed previously with the LSB the challenges of accurately evaluating the impact of our approach on consumer outcomes, due to the tiny number of consumer transactions in the market. As the LSB is aware from its own research, typical methods like mass surveys invariably provide no data from clients of Costs Lawyers.

16. We use a bespoke [Client Survey](#) to collect feedback directly from Costs Lawyer's clients (of all types) about their experience of using a Costs Lawyer and we have updated the survey to include questions designed to test compliance with the B2C regulatory framework, particularly around the information provided to consumer clients. This will ensure we capture evaluative data in the rare situations where we can reach consumer clients of Costs Lawyers. Otherwise our supervision activities described above will provide a proxy for measuring impact on client outcomes, based on the assumption that improvements in the nature and presentation of information available to consumer clients will help them make informed choices.

## Additional information about the specific expectations in the Statement

### Public legal education

17. Our primary activity in this area is our continued contribution to Legal Choices and involvement in the oversight and evaluation activities for that project as a member of the Governance Board, in collaboration with the other legal regulators.
18. We also provide resources on our own website in a [For the Public](#) section, that contributes to public legal education around legal costs and how costs advisers (regulated and unregulated) can provide assistance. We continue to augment this content over time; for example, one of the recommendations from our recent report on Costs Lawyers and Technology is set out below, which will see us add to our PLE resources during 2025 in the way recommended.

*"Consumer facing guidance – Indications from some interviewees suggest that consumer awareness of costs has risen in recent years, following greater media coverage. The CLSB could work with consumer facing organisations, or others that might deal with litigants in person, to provide more detailed consumer facing guidance on costs and points for consumers to be cautious of when self-serving using technology."*

### Information about price

19. In 2022 we looked for any homogeneous services offered by Costs Lawyers, available to individual consumers, that we could reference to carry out research on prices and price transparency, but we found no suitable candidates. Our [2022 RPF project](#) report concluded that:

*"Costs Law firms, overall, tend to be more focused on attracting commercial work. This is largely because the majority of personal injury work is now dealt with by Costs Lawyers working in-house within solicitors' firms. But also reflects the fact that, according to our interviewees, commercial cases are becoming bigger and more complex."*

20. It is unlikely to be productive or even possible for the CLSB to take any measures aimed at improving price transparency of services offered by Costs Lawyers to corporate or professional clients, and it may even be harmful. Without the benefits of encouraging individual consumers to shop around, or the benefits of deterring unfair or misleading pricing practices (principles drawn from consumer protection legislation covering individual consumers), there is simply a risk that in a very small sector disclosure of pricing information would encourage convergence of prices.
21. For those Costs Lawyers who do market or provide services to consumer clients, we publish [guidance on price transparency](#). This is referred to in the B2C regulatory framework and thus falls within the scope of our supervision activities in this area.

### Information about quality

22. Our primary activity in this area is ongoing participation in development of the Regulatory Information Service, in collaboration with the other legal regulators.
23. We have engaged with the sector's collaborative work on quality indicators and comparison tools. However, as you know, the areas of focus for the comparison tools pilot and follow-up work relate to high volume transactional activities (such as conveyancing and divorce), which are difficult to read across to the work of individual Costs Lawyers. We have been following the learnings from these activities – with gratitude to those directly involved for sharing their work – and will look for opportunities for costs advice to be considered as an “add-on” to any comparison products developed for more mainstream legal services.

### Information about service, redress and regulation, and how information is made available

24. In May 2022, following publication of the Statement, the CLSB's board approved an action plan for implementing the specific requirements under the headings “Information about services, redress and regulation” and “How information is made available to consumers”, including in relation to the accessibility of prescribed information in a single place online.
25. The action plan identified gaps in the information we published at the time, as well as drawbacks with the presentation of our main source of regulatory information about individual practitioners: the Register of Costs Lawyers. The gap analysis is reproduced below.

Information required	Status (May 2022)	Action required for compliance
a. Contact information	Near compliant (minor adjustment needed)	Name, address and telephone number of organisation already included.  Need to remove option to omit organisation address and telephone number from the Register on application form (whilst retaining functionality on database for exceptional circumstances).
b. A description of the services that the provider offers, including areas of practice	Not compliant (new data and functionality needed)	Provide a checklist of areas for Costs Lawyers to tick on practising certificate application form – PI/CN; commercial; legal aid; court of protection; criminal; family; litigants in person; solicitor/own-client; other (unspecified).  Display selected areas on Register (subject to agreement on what is in grid view, and what is in the expanded view).  <i>Other action: Add search by practice areas functionality to improve user experience (from January 2023).</i>
c. The provider's regulatory status and registration details	Compliant	None – Register is updated annually to show all Costs Lawyers with current practising certificate, and their CL number.  <i>Other action: Show regulatory status of organisation (from January 2023).</i>



d. The provider's disciplinary and enforcement records, including any sanctions	Near compliant (minor adjustment needed)	Adjustments needed to ensure this information is "in one single place". Remove the Conditions on Practising column from the Register. Add relevant information (as currently shown on the <a href="#">Disciplinary outcomes</a> webpage) to the expandable section of the Register.
e. Published decisions made by the Legal Ombudsman on complaints about the provider	Not compliant (new functionality needed)	Add link to any Ombudsman decisions to the expandable section of the Register. This will be updated manually on a quarterly basis using data reported directly from the Ombudsman about cases involving Costs Lawyers.

26. Several of the actions required additional data and/or new consents to be collected from Costs Lawyers during the PC renewal round that took place at the end of 2022. Technical developments were worked up in advance of PC renewals and new software was introduced to allow us to maintain the grid style of the Register while providing the functionality to display additional information in an expandable section for each Costs Lawyer. The changes to the Register went live as soon as the requisite data and consents were obtained. This meant we were compliant by 31 January 2023.

27. We sought early feedback from LSB colleagues on the action plan, to ensure it met LSB expectations. The LSB suggested that we test the user experience of the new Register format at an early stage. We undertook this testing in August 2022. To do this we developed a beta version of the Register and augmented our existing data with dummy entries, allowing us to devise a series of tasks that we could ask participants to carry out in order to test how easy it was to find different types of information. This proved a useful exercise, and while all test participants felt the new format was user-friendly we did receive some suggestions for simple tweaks that improved the user interface.

28. You can see from the [Register](#) that we now publish comprehensive and easily accessible information on practising areas, disciplinary decisions, practising conditions, and Legal Ombudsman decisions for every practitioner. We also took the opportunity to include information in the Register about whether a Costs Lawyer's firm or business is regulated and, if so, by whom. This was an area we identified through our Enquiries Tracker as causing confusion and uncertainty for clients.



**By email only**

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27 September 2024

Dear Kate

**2024 Annual Regulatory Performance Assessment: Information request**

1. This letter contains our request to the Costs Lawyers Standards Board (CLSB) to provide us with assurance as to how you are meeting the standards set out in the Legal Services Board's Regulatory Performance Framework. It also explains the process and timelines for our 2024 assessment and sets out the specific information that we will require from the CLSB.

*Scope*

2. As set out in the letter from Richard Orpin dated 28 May, our 2024 assessment will start in September 2024 and will cover the period June 2023 to September 2024.
3. Our annual assessment information request asks **all regulators** to provide assurance about their performance against all three of our regulatory framework's standards, **well-led, effective approach to regulation and operational delivery**. In relation to these standards, we will be seeking particular assurance about the following common issues we identified in our 2023 assessment:
  - transparency, particularly in respect of regulators' decision-making
  - capacity and capability
  - use of evidence and evaluation of impact of regulatory activities
  - horizon scanning and risk
4. Our 2023 assessment also identified enforcement as a common performance issue, however we will address this area through our disciplinary and enforcement project.

5. Richard's letter of 28 May highlighted our concerns about some regulators not providing meaningful transparency about the decisions they take that affect their regulated communities, consumers and the public. It also set out in detail our expectations about what all regulators need to do to provide meaningful transparency about the decisions they take, and we look forward to receiving assurance from the CLSB on this issue.
6. We will also be seeking assurance about how regulators are continuing to implement the ongoing competence statement of policy and are evaluating and/or planning to evaluate their work.
7. As you know, in our letter of 17 June, we requested all regulators to provide assurance about how they are meeting the expectations set out in our empowering consumers statement of policy by 30 September 2024, and we thank you for your response which we recently received.

#### *Information request*

8. Your response to our information request should include:
  - Your submission explaining how you provide your Board with assurance that the CLSB demonstrates the regulatory framework's characteristics and, adding these together, meets the standards. This should include your assurance mapping and any other analysis.
  - Supporting evidence including links to relevant published documents (e.g. Board papers). There is no need to provide large amounts of information. We are seeking the documents that you judge as the most relevant documents and evidence to provide assurance.
9. We expect regulators to be frank and open in sharing information with the LSB and that this will be available in documents already provided or that have been published. You should assume that we will be familiar with your published board papers and other key corporate documents and therefore signposting will be sufficient. Where necessary, confidentiality will be maintained in how we present information in our assessment. Please identify any documents you consider to be confidential when responding to this request.
10. In February 2024, we assessed the CLSB as having provided sufficient assurance against our framework's well-led and effective approach to regulation standards. Although we did not assess your performance against its operational delivery standard, we did review your progress in the areas covered by it, including education and training and authorisation.
11. For this year's assessment we ask that you provide:
  - assurance as to how the CLSB demonstrates the characteristics of the well-led, effective approach to regulation and operational delivery

standards, and in doing so how you are addressing both the common issues and specific issues relating to the CLSB's performance we identified in our last assessment, and

- responses to the specific questions set out in the Annex to this letter.
12. When preparing your response, in line with the well-led standard and your Board's role in monitoring the CLSB's performance, we would be happy for you to use information in the form that you have already provided to your Board, supplemented by any additional information you consider necessary to provide assurance.
13. Our assessment of your performance will take account of information that we have gathered since May 2023. This will include: our regular contacts such as relationship management meetings, CEO and Board-level meetings; applications submitted to us for approval; any information that you may have provided since the last assessment round; and information from other sources including publicly available material.
14. **Please provide us with your response to this information request by 15 November 2024.**

*The LSB's assessment*

15. Our assessment will include full assessments of your performance against the framework's three standards. It will be in a similar format to last year's, and we will again apply a red/amber/green rating against each standard, but not against each characteristic. However, to help you understand our assessment, we will include references to individual characteristics in the version sent to you for review.

*Next steps*

16. As we have previously, we will work with you to agree any new actions and milestones stemming from our assessment. We will ensure that you have time to review and comment on our final assessment before its publication in March 2025.
17. If you have any questions about the assessment process, the request for information set out in this letter and its annex, or the deadline for response please either contact me or Suganya Suriyakumaran, your relationship manager.

Yours sincerely



Angela Latta, Head, Performance and Oversight

## Annex – Information request for CLSB

### **Well-led: *Regulators are well-led with the resources and capability required to work for the public and to meet the regulatory objectives***

*Please provide assurance to the LSB on how CLSB demonstrates this standard's characteristics and therefore meets this standard. As part of your response please also answer the specific questions below.*

#### **Specific questions**

**1:** Please provide an update on the CLSB's annual risk outlook and how it has informed Board activities and decisions.

**2:** Please provide an update on the implementation of the CLSB's new Code of Conduct.

### **Effective approach to regulation: *Regulators act on behalf of the public to apply their knowledge to identify opportunities and address risks to meeting the regulatory objectives.***

*Please provide assurance to the LSB on how CLSB demonstrates this standard's characteristics and therefore meets this standard. As part of your response please also answer the specific questions below.*

#### **Specific questions**

**3:** Please provide an update on how you are meeting the outcomes of the [ongoing competence policy statement](#) and your plans for evaluating the effectiveness of the measures you have taken and continue to take.

**4:** How does the CLSB ensure its regulatory and sectoral risk assessment activities are effective and contribute to the development of its regulatory approach? How does it ensure it has sufficient capacity and capability to carry them out? What steps has it taken, if any, to review its risk identification and assessment practices based on cases and events it and other regulators have encountered?

**5:** Please describe how during the assessment period CLSB has:

- Sought to understand the needs of consumers and the public
- Engaged with consumers, the public and interested stakeholders (including hard-to-reach groups)
- Taken account of information gathered from this engagement in:
  - o Identifying risks to consumers and the regulatory objectives
  - o Revising its regulatory approach and practices
  - o Carrying out its regulatory activities

**6:** Please provide an update on the CLSB's long-term communication strategy.

**7:** Please provide an overview of the work CLSB has carried out in relation to diversity and inclusion since January 2024, and any next steps resulting from this work.

**8:** Please provide an update on the CLSB's work to encourage innovation and the adoption of innovative approaches amongst costs lawyers.

**9:** Please provide an overview of the work the CLSB has undertaken to understand poor client outcomes in unregulated parts of the market.

**Operational delivery: *Regulators' operational activity (eg education and training, authorisation, supervision, enforcement) is effective and clearly focused on the public interest.***

*Please provide assurance to the LSB on how CLSB demonstrates this standard's characteristics and therefore meets this standard. As part of your response please also answer the specific questions below.*

***Specific questions***

***Education and training***

**10:** Please share an overview on the implementation of the CLSB's new Costs Lawyer Professional Qualification and Ongoing Competency Framework, including any themes identified during their first year of implementation.

***Authorisation***

**11:** Please provide an update on the potential apprenticeship route to qualification.

**Minutes of the ACL Council Meeting**  
**held on 23<sup>rd</sup> July 2024**  
Irwin Mitchell office, London



Council members present: Jack Ridgway (JR), David Bailey-Vella (DBV), Stephen Averill (SA), Kris Kilsby (KK), Julian Caddick (JC), Nathan Cameron (NC) & Amy Dunkley (AD)

Also present: Carol Calver (CC) Head of Operations

The meeting started at 11:00

Item	
1	Welcome and apologies
1.1	Apologies were received from Victoria Morrison-Hughes. JR welcomed all to the meeting.
2	Minutes of the council meeting held on 25 June 2024
2.1	It was unanimously agreed that the draft minutes of 25 June 2024 were an accurate reflection of the meeting. It was agreed that items 2.1, 5.4, 7.2, 7.3, 7.7 & 8.1 should be partially redacted before publishing on the website.
3	Actions arising from the council meeting held on 25 June 2024
3.1	Actions were reviewed and updated.
4	Chairman's Report
4.1	JR advised Council of the resignation from Council of Stephanie McBride, effective 30/06/24. Council Member nominations will take place in December to coincide with term end of SA
4.2	JR reported back on CLSB feedback regarding Entity Regulation following the discussion that took place regarding the introduction of a Draftsperson member category during the June meeting with CLSB CEO Kate Wellington. The CLSB remain committed to achieving similar outcomes through guidance and routines rather than structured regulation.
4.3	Council discussed delegated authority regarding the potential Draftsperson member category where Council considered the CLSB Reserved Legal Activity Rights, para 17 to 21 and confirmed the ACL intention to adhere to the same. <i>Redacted due to confidentiality.</i>  Further to this the ACL will review the supervised practice guidelines in place for ACL Training to further apply and align where necessary. A full review of supervisory roles and best practice will be included in a review of the standard code of conduct for all members.
4.4	Council approved a summary of member responses from the initial consultation on the suggested updates to the Association Articles & By-Laws. The responses result in two further questions to be put to the membership, this will be carried out by a separate survey to close early September.

5	PR & Marketing Committee Report
5.1	Council viewed the recently created promotional videos and approved them for use on both the ACL and ACL Training websites as well as social media.
5.2	AD & CC suggested to Council a restructuring of conference sponsorship packages following a review with 'usual' sponsors and internal discussions regarding the complexity currently involved. Council approved a new two-level package – a 'speaker' and an 'exhibition' option. Full details will be circulated via the eBulletin and previous sponsors will be notified directly by Operations.
5.3	DBV detailed to Council that a positive response had been received from Modern Law after BL approached them regarding the inclusion of a Costs Award category. <i>Redacted due to confidentiality.</i>
6	Policy Committee Report
6.1	KK updated Council on the SCCO suggestion of ACL advising on the development of updated format of the Precedent G (Points of Dispute). The ACL plan to create a working party to fully support this and members will be asked to volunteer over the coming weeks.
7	Education Committee Report
7.1	DBV advised he was liaising with ACL Training to confirm latest admission numbers for the next CLPQ intake for September.
8	Finance & Internal Policy Committee Report
8.1	SA advised that due to final investment fund values being available in July the 2023 End of Year accounts were now complete and ready for sign off. These will be distributed to Council before full sign off anticipated by JR in August.
9	Operations Report
9.1	Ahead of venue viewings taking place for the London October Conference, CC to suggest pricing levels for member tickets prior to tickets going on sale mid-August.
10	Any other business
10.1	<i>Item 10.1 redacted due to confidentiality.</i>
11	Date of next meeting
11.1	Suggestion that Council do not meet in August due to holiday and work commitments with plan to move September, October and November meetings to the beginning of the month.

# Complaints Procedure Audit 2024

## Board report on outcomes

22 August 2024

The annual audit of complaints procedures was carried out during June and July. This paper summarises the outcomes and future work arising from the audit.

### Outcomes summary

1. 17 Costs Lawyers were selected for audit in 2024. All of them had complaints procedures noted as being non-compliant with the [Guidance Note on Complaints Procedures](#) when they applied for a 2024 practising certificate.
2. At 22 August the responses were:
  - a. 6 – submitted revised procedures which now comply (2 based on model)
  - b. 1 – submitted revised procedures which require further changes to comply
  - c. 11 – acknowledged email, but have not submitted revised procedures to date.
3. The table below shows how many of the 19 audited did not comply (or had out of date information) in each of the areas checked.

Audit checklist – Number of policies <i>not</i> complying with Guidance		
1	State date effective or last updated	12
2	Be clear and simple with as few steps as possible	1
3	Identify the person to whom the complaint should be made	7
4	Be reasonable, fair, proportionate and responsive	1
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	16
6	State clearly the timeframe for a complaint to be resolved	5
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	12
8	Provide [correct] contact details for the Legal Ombudsman and CLSB	
	CLSB or LeO or both missing	5
	Out of date contact details	11



4. In addition to the above only one of five complaints procedures required to provide information about ADR (as the Costs Lawyer provides services to consumers) did so.
5. The [Lessons from our audits of complaints procedures webpage](#) has been updated in light of the audit outcomes.

### **Feedback from Costs Lawyers**

6. Not all those audited are positive about the experience, but some do welcome it:
 

“This level of feedback/scrutiny is very helpful. I find the positive engagement very helpful.”

“Many thanks for your email – it is actually gratefully received. I am conscious that we haven’t updated this for some time, and your guidance will prompt us to get this done, and points us in the right direction.”

“Many thanks for your valued help and patience.”

“Many thanks for your assistance, it is and has been very much appreciated.”

### **Future work**

7. The revised complaints procedures for the 11 Costs Lawyers where a compliant procedure has not yet been seen will be checked after submission with applications for a 2025 practising certificate.
8. At that time the complaints procedures of all staff in organisations where a Costs Lawyer has been audited this year will also be checked, to ensure everyone is using the revised document.

### **2023 Complaints Procedure Audit – issues outstanding from last year’s Board Report**

9. 19 Costs Lawyers were included in the 2023 audit.
10. The complaints procedures submitted with applications for a 2024 practising certificate for the 12 Costs Lawyers who did not submit revised versions in 2023 were reviewed in April 2024.
11. 7 of these 12 Costs Lawyers submitted revised complaints procedures that are compliant with the guidelines, and used by all Costs Lawyers in their organisation.
12. 2 Costs Lawyers did not apply for a 2024 practising certificate following retirement.
13. 1 Costs Lawyer submitted a revised complaints procedure but it still did not comply. They revised it as soon as this was pointed out.
14. 1 Costs Lawyer had moved organisations – but the previous organisation had a revised and compliant procedure.
15. 3 Costs Lawyers had not made any changes to their complaints procedures. 2 of these responded promptly to a further reminder to make revisions to ensure compliance. 1 had to be threatened with disciplinary action to respond.
16. The complaints procedures of Costs Lawyers working in the same organisation as the 4 Costs Lawyers whose procedures were not compliant until 2024 will be checked in the 2025 practising year.



# Administration Handbook

This is a working document, updated frequently.

**Last update: 20 September 2024**

**Last full review: 20 September 2024**

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