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## The purpose of this guidance

1. This guidance aims to assist Costs Lawyers in identifying and dealing with conflicts that might arise between the following core principles in the [Code of Conduct](#):
  - Principle 1: Act with honesty and integrity and maintain your independence
  - Principle 3: Act in the best interests of your client
  - Principle 7: Keep the affairs of your client confidential
2. There can at times be a tension between the conduct required to act with integrity and promote the proper administration of justice on the one hand, and the need to maintain your client's confidence and act in their interests on the other. While every situation is unique, and you must decide how to meet your professional obligations on a case by case basis, this guidance aims to help you consider the relevant factors.

## Integrity in the context of legal professionals

3. Integrity means adhering to the ethical standards of your own profession. There is an expectation that professional people will be held to a higher standard than the standard applying to others outside the profession. This is established in case law (see, for example, *Beckwith v Solicitors Regulation Authority* [\[2020\] EWHC 3231 \(Admin\)](#)). The leading authorities concern solicitors, but the same overarching principles will be relevant to other parts of the legal profession, including Costs Lawyers.
4. "Integrity" is a useful shorthand expression to denote the higher standards that society expects from professional persons and which the professions expect from their own members. The underlying rationale is that professions have a privileged and trusted role in society. In return, they are required to live up to their own professional standards. The duty to act with integrity applies not only to what professional persons say but also to what they do. In every instance professional integrity is linked to the manner in which that particular profession serves the public (see *Solicitors Regulation Authority v Wingate* [\[2018\] 1 WLR 3969](#)).

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5. The High Court has held that lack of integrity arises when, objectively judged, a professional person fails to meet the high professional standards to be expected of that professional. It does not require an element of conscious wrongdoing (see *Williams v Solicitors Regulation Authority* [\[2017\] EWHC 1478 \(Admin\)](#)).

## Clients and confidentiality

6. Principle 7 of the Code of Conduct requires that Costs Lawyers keep the affairs of clients confidential, unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.
7. Principle 3 of the Code of Conduct requires you to act in the best interests of your client at all times. As a general rule, acting in the best interests of your client includes keeping their affairs confidential, as prescribed by Principle 7. These principles are clearly related.

## Conflicts between the principles

8. In relation to the costs aspects of a dispute, there will often be several stakeholders with an interest in the outcome, or with a claim to part or all of the costs recovered. Those stakeholders might include the parties to the litigation, the solicitors acting for them, former solicitors or other legal professionals who acted at certain stages of the matter, litigation funders, and so on. Depending on the circumstances, the interests of those stakeholders may or may not align.
9. The Code of Conduct makes it clear that, where interests do not align, a Costs Lawyer must act in the interests of their ultimate client in preference to the interests of other stakeholders. Principle 3.1 provides:

*“You must act at all times in the best interests of your client, 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. You must act in the*

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*best interests of your client regardless of the consequences for your professional client or other intermediary. You must not permit a professional client, employer or any other person to limit your ability to fulfil this duty.”*

10. However, the existence of different stakeholders with competing interests in costs disputes can create conflicts between your duties to your own client and your duty to act with integrity. Here is a hypothetical example. You are instructed by a client who is the receiving party in costs proceedings. The client has fallen out with their former solicitor, who acted for the client in the substantive litigation, and wants nothing to do with them. The client therefore instructs you not to provide information to, or deal in any way with, the former solicitor in relation to the costs aspects of the proceedings. However, the former solicitor has a legitimate interest in accessing information that is now in your possession, because they are entitled to the portion of the recovered costs that relates to their fees and the client is attempting to obstruct that process.
11. Examples will vary, but in circumstances like the above, you must consider carefully how to balance the conflicting professional principles. Every case must be considered on its own facts, but you should always recognise the higher-priority principles of acting with integrity, not diminishing the confidence that the public places in you or the profession, and upholding the rule of law and the proper administration of justice.
12. In the above example, providing information to the former solicitor might appear to involve you preferring the solicitor’s interests to your own client’s interests. However, that conduct might nonetheless be necessary to promote the proper administration of justice in the specific circumstances of the case.
13. Maintaining the correct balance will not always be easy. It will help you evaluate the situation if you bear in mind that a Costs Lawyer, just like a solicitor, is not a hired gun. It is important to recognise those wider duties and not to rationalise misconduct under the mistaken belief that the only duty is to the client.

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14. Additional resources in our [Ethics Hub](#) might help you identify relevant factors to consider. Always [contact us](#) if you need further advice.

**END**