Guidance Note

Regulatory issues when closing down a practice

8 April 2024 (version 2)

Costs Lawyer Standards Board

Who is this guidance for?

1. This guidance is for Costs Lawyers who:
   - are sole practitioners; or
   - are owners or officers (for example, shareholders, directors or partners) of a business that employs Costs Lawyers or otherwise provides the services of Costs Lawyers to clients,

   and who are closing down the relevant practice or business.

2. This guidance does not apply if the practice is authorised by another regulator under the Legal Services Act 2007 – such as the Solicitors Regulation Authority – as that regulator will have its own rules governing closure of the practice. However, a Costs Lawyer who is involved in the disorderly closure of such a business may still face regulatory action from the CLSB, particularly if clients' interests are harmed.

Core considerations

3. The following Principles in the CLSB Code of Conduct should be at the forefront of your mind if you are involved in closing a practice:

   Principle 1: Act with honesty and integrity and maintain your independence

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

   Principle 3: Act in the best interests of your client

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

   Principle 7: Keep your affairs of your client confidential

4. Protecting your clients' best interests should be paramount. This means:
   - an orderly closure, giving as much notice to clients and others as possible if you are not going to complete their work;
   - ensuring that any client money held by the business is properly safeguarded;
   - ensuring that client data and files are stored or transferred securely; and

- maintaining insurance for an appropriate run-off period.

Each of these considerations is covered in more detail below.

5. Failure to close your practice in an orderly fashion can have the following types of consequences:
   - clients are prejudiced, as they are left without representation, and court proceedings are disrupted or compromised;
   - confidential client files and information, including personal data, are not properly safeguarded;
   - client money is put at risk; and
   - you face regulatory action from the CLSB as well as complaints or civil action from your clients.

Who to inform of the closure

6. Clients for whom you are currently acting should be told of the closure as soon as possible so that they can make arrangements to instruct someone else if you are not going to complete their matter.

7. The courts will need to be informed if you are no longer acting for clients. You will need to make arrangements to come off the court record where relevant.

8. Past clients for whom you hold files or other documents should also be informed if your arrangements for archiving or processing personal data are going to change.

9. Your professional indemnity insurers should be informed.

10. You should let the CLSB know of your change of practice so that the register can be updated and to ensure we have your current contact details for important communications.

11. You should inform others who deal with your business, regulate it or provide services to it – such as your bank, accountants, HMRC, any Third Party Managed

Account providers, the Information Commissioner's Office, Companies House and so on.

Client files and information

12. You must ensure that client files are kept confidential and secure, and that client assets and information are safeguarded. Continuing to store client files in hard copy after closure can be extremely expensive and you have a number of options open to you.

13. The files can be given back to the former client. If the client is instructing a new firm, the file can be passed to them.

14. Scanning files into electronic format will allow for cheaper storage, but adequate information security measures will need to be put in place.

15. Old files can be destroyed. However, you should bear in mind that many of the papers on the file will belong to the client. Any original documents, such as deeds that the client may need, should be returned to them. Your client care letter may have told the client that files will be destroyed after a certain period (commonly six years after the matter closing). If not, you will need to evaluate the risk of destroying files without the client's consent, bearing in mind the possibility that you will need to refer to the file in the event of a claim against you or a complaint to the Legal Ombudsman. Any destruction of personal data will also need to comply with data protection laws.

16. For more information, see our Guidance Note on retention of client data and files.

Client money

17. Whilst Costs Lawyers are not allowed to accept client money (under Principle 3.6 of the Code of Conduct), it might be that your business is holding client money in its own name. See our Guidance Note on handling client money for more information. Client money must be safeguarded in the event of closure and

returned to clients or otherwise dealt with in accordance with your agreement with the client.

Professional indemnity insurance

18. Under Practising Rule 9.1, Costs Lawyers must ensure that they:
    (a) practise with the benefit of professional indemnity insurance of a minimum £100,000 (any one claim) to include loss of documents; and
    (b) on an ongoing basis, assess all financial risk associated with work being undertaken by them and ensure that professional indemnity insurance (including loss of documents insurance) is in place in excess of the minimum at a level commensurate with that risk.

19. You should bear in mind that claims may be received after you have closed and that most professional indemnity insurance is provided on a "claims made" basis. This means that your current insurance covers you on the basis that the claim is made during the insurance period not on the basis that the cause of action arose during the insurance period.

20. For this reason, assessing financial risk associated with your work and purchasing appropriate professional indemnity insurance in excess of the minimum will require you to purchase run-off cover for work that you carried out before closure where a claim has not yet been made. Given the six-year limitation period for breach of contract and negligence, this would be the most prudent period for which to purchase run-off cover.

Financial difficulties

21. If your practice or business is in financial difficulties, you should take steps as quickly as possible to protect clients' interests as set out above.

22. Under Practising Rule 4.2, you are obliged to inform the CLSB if you have (amongst other things):
    - been subject to an adjudication of bankruptcy;

- been granted a debt relief order;
- entered into an individual voluntary arrangement or a partnership voluntary arrangement; or
- been a director of any company or partner in an LLP or partnership that has been the subject of a winding up order, an administrative order or an administrative receivership, or has otherwise been wound up or put into administration in circumstances of insolvency.

23. If any of these events occur, the CLSB may revoke your practising certificate under Practising Rule 8.1.

24. It is therefore vital that you seek to address the situation as soon as possible if you are in financial difficulties. You may need expert advice from an insolvency practitioner.

25. You can contact the Association of Costs Lawyers for further information and support. For help in relation to the personal impact of financial difficulties on your mental health and wellbeing, as a Costs Lawyer you have access to the services provided by LawCare.

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