

Costs Lawyer Standards Board



General

1. This guidance note should be read in conjunction with the CLSB's Practising Rules, which can be found in the [Costs Lawyer Handbook](#).
2. Under Practising Rule 3.4, the CLSB may impose a condition or conditions on a practising certificate either when the certificate is issued or during its currency. In addition, Conduct Committees and Conduct Appeal Committees have the power to impose conditions on a practising certificate under the CLSB's Disciplinary Rules and Procedures.
3. We are only likely to impose conditions under Rule 3.4 where:
 - the relevant facts are not in dispute;
 - we do not consider it necessary or proportionate to bring disciplinary proceedings in order to impose, or ask a Conduct Committee to impose, a disciplinary sanction; and
 - in the case of an application for a practising certificate, we do not consider it more appropriate to refuse the application.
4. Broadly speaking there are two types of conditions:
 - those that restrict the Costs Lawyer's ability to practise; and
 - those that specify steps that the Costs Lawyer must follow.

Grounds for imposing a condition

5. There are several grounds upon which the CLSB can impose conditions on a practising certificate, as set out in Practising Rule 3.4. Note that a condition may be imposed on more than one ground, and more than one condition may be imposed at any given time.
6. Where a Costs Lawyer is returning to practice after a gap of two years or more, they will have to comply with an enhanced competency check process as below.

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- a. They must show 12 CPD points in the previous 12 months and set and submit CPD objectives for the rest of the current practising year in which they are returning, or
 - b. They return to practising with a special condition “to practice under supervision” by another Costs Lawyer applied. The duration of the special condition will be one of the following:
 - i. Until the next Practising Certificate renewal when they would be expected to show 12 CPD points, or
 - ii. Sooner if they can show 12 CPD points and have written support from their supervising Costs Lawyer.
 7. Below are examples of situations in which we might impose conditions, relating to each of the grounds in Rule 3.4. The most common situation in which we might impose conditions is where a Costs Lawyer (or a non-Costs Lawyer applicant for a practising certificate) discloses an event as required under Practising Rule 4.
 8. The examples given below are indicative only, aimed at helping practitioners and their clients to understand the nature and purpose of conditions on practising. We will always treat each case individually and consider all material facts before imposing conditions. We will also give the Costs Lawyer an opportunity to provide additional evidence or information in writing before we make a decision about conditions.

Ground (a): The lawyer is unsuitable to undertake certain activities or engage in certain business or practising arrangements

9. **EXAMPLE:** Prior to qualifying as a Costs Lawyer, an applicant for their first practising certificate entered into an individual voluntary arrangement in relation to their personal debts. The event is disclosed to us under Practising Rule 4, as part of the practising certificate application process.
10. **CONSIDERATIONS:** The event occurred before we regulated the applicant, so it does not constitute a breach of our regulatory rules. Nevertheless, we have

concerns about the applicant's financial management capabilities. The applicant confirms to us that they have a job offer as a Costs Lawyer with a solicitors' firm and will not be running their own business. They also provide us with information about steps they have taken to better manage their finances in the future. We do not believe that we should refuse to allow the applicant to practise altogether.

11. OUTCOME: We grant the application but impose a condition that the applicant can only practise as a Costs Lawyer as an employee, and not on their own account, for a period of 12 months. After that period, we will ask for further information from the applicant and assess whether a condition should be imposed on their following year's practising certificate. The condition is shown on their practising certificate when issued.

Ground (b): The lawyer is putting, or is likely to put, at risk the interests of clients, third parties or the public

12. EXAMPLE: The Information Commissioner's Office (ICO) has investigated a data breach involving a Costs Lawyer and has made a number of regulatory determinations. These determinations are immediately disclosed to us by the Costs Lawyer, as required by Practising Rule 4.
13. CONSIDERATIONS: In general, we are likely to refuse an application for a practising certificate where the applicant is putting someone else's interests at risk, unless we are satisfied that conditions can deal with the risk adequately. A regulatory finding against a practitioner by another regulator is a good example of a situation in which the relevant risk might have been mitigated to a large extent already, through processes outside of our regulatory framework.
14. OUTCOME: We are content that the ICO has dealt with the disciplinary aspects of the Costs Lawyer's conduct and decide that there is no need for us to duplicate the ICO's processes by conducting a further disciplinary investigation. However, we consider that conditions on practising are appropriate for the ongoing protection of the Costs Lawyer's current and prospective clients. We impose

conditions relating to the handling and security of clients' personal data. We issue the Costs Lawyer with a replacement practising certificate, showing the conditions imposed.

Ground (c): The lawyer will not comply with the CLSB's regulatory arrangements and/or will require monitoring in relation to compliance with the CLSB's regulatory arrangements

15. **EXAMPLE:** An audit reveals that a Costs Lawyer has not been complying properly with the CLSB's continuing professional development (CPD) requirements. The Costs Lawyer acknowledges their error, explains that they had misunderstood their obligations and asks for help in putting things right.
16. **CONSIDERATIONS:** The Costs Lawyer's explanation is consistent with the information they provided to the CLSB in their annual CPD records. There is no evidence that they have been dishonest or tried to cover up their mistake. We do not consider that the problem is yet placing clients at risk in terms of the Costs Lawyer's competency.
17. **OUTCOME:** We impose a condition that the Costs Lawyer must submit evidence of their CPD attainment to us annually, in addition to the usual CPD record.

Ground (d): The lawyer should take specified steps conducive to the regulatory objectives

18. **EXAMPLE:** A Costs Lawyer has not been practicing for over two years and reapplies for a new practising certificate. In order to comply with the CLSB's continuing professional development (CPD) requirements at renewal, the Costs Lawyer needs to be able to show 12 CPD points. The Costs Lawyer has not undertaken any CPD in over two years so cannot satisfy this expectation.
19. **CONSIDERATIONS:** The Costs Lawyer's gap in practising involved no CPD training or work in Costs. They have now joined a Costs Firm and will be under the supervision of an experienced Costs Lawyer who is will monitor performance. The

supervising Costs Lawyer is willing to be responsible for the returning Costs Lawyer satisfying all regulatory requirements, including attaining 12 CPD points.

20. OUTCOME: We impose a condition that the Costs Lawyer will remain under the supervision of the experienced Costs Lawyer until the next Practising Certificate renewal when they would be expected to show 12 CPD points, or sooner if they can show 12 CPD points and have written support from their supervisor.

Grounds (e): It is otherwise in the public interest to impose a condition in light of the regulatory objectives

21. EXAMPLE: The Legal Ombudsman has reported to us the outcome of a recent complaint against a Costs Lawyer. Ultimately, the case was determined in favour of the Costs Lawyer. However, the Legal Ombudsman's findings show that the Costs Lawyer did not follow their internal complaints procedure properly when handling the complaint. When we approach the Costs Lawyer about this, they acknowledge that they sometimes take an early assessment of the merits of a complaint and, if they think it has no merit, dismiss it without following their complaints procedure. On reflection, they recognise that this could lead to unsatisfactory outcomes for their clients. They promise to make changes to their internal processes so this does not occur again.
22. CONSIDERATIONS: In order to promote the regulatory objective of "protecting and promoting the interests of consumers", Costs Lawyers should follow their internal complaints procedure in all cases, regardless of whether they subjectively believe a complaint to have merit. We are therefore concerned that the Costs Lawyer's approach is not conducive to the regulatory objectives. We note that no other conduct issues were identified by the Legal Ombudsman in the context of the complaint, and that the Costs Lawyer appreciates the need to address shortcomings in their processes.
23. OUTCOME: We impose conditions requiring the Costs Lawyer to follow their internal complaints procedure in all cases, to notify the CLSB of any complaints

received during the year, and to explain how those complaints are being handled. We work with the Costs Lawyer to support them in improving their approach to complaint handling.

The effect of a condition

24. Where a condition on practising is imposed, this is published against a Costs Lawyer's entry on the register of Costs Lawyers (Practising Rule 5.3). This means that members of the public who search the register will be alerted to the fact that a condition on practising exists. Further information about the nature of the condition can be accessed on our website.
25. A Costs Lawyer must comply with any conditions imposed. Failure to do so is likely to lead to a disciplinary sanction – which could include suspension or revocation of the practising certificate – and/or refusal of an application for renewal of the certificate. A Costs Lawyer may be asked to provide evidence of compliance with a condition, either when they apply to renew their practising certificate or at appropriate junctures throughout the practising year.

The duration of a condition

26. A condition will remain in place for such period as the CLSB considers necessary to meet its original purpose. This means that we may reimpose the condition when the practising certificate is renewed. We may amend the condition if we consider this appropriate, provided that the amended condition meets one or more of the grounds for imposition. A condition may be imposed for less than a full practising year, such that it expires on a specified date or upon completion of a specified event.
27. Under Practising Rule 3.6, the CLSB may remove a condition on a practising certificate if it considers, on written application of the Costs Lawyer or on its own initiative, that there has been a change of circumstances such that it is no longer satisfied that any of the grounds in Rule 3.4 apply.

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28. Under Practising Rule 10, a Costs Lawyer also has a right of appeal against the CLSB's decision to impose a condition or to refuse to remove one.

Conditions relating to Qualifying Experience

29. There is a special process for imposing conditions relating to Qualifying Experience, although our power to impose such conditions still derives from Practising Rule 3.
30. The CLSB's Training Rules set out the requirements for qualifying as a Costs Lawyer. Training Rule 3.1 provides that, in order to qualify, a Trainee must have successfully completed the Costs Lawyer Qualification and have completed, or be currently undertaking, two years of Qualifying Experience.
31. This means that a Trainee can apply for their first Costs Lawyer practising certificate even if they have not yet completed their Qualifying Experience, so long as they are working towards completing it and can provide an indication of when they expect it to be complete.
32. If an applicant for a first practising certificate indicates that they have not yet completed their Qualifying Experience, or if the CLSB determines that they have not met the requirements for Qualifying Experience in the Training Rules and thus a further period of experience is required, they will be issued with a practising certificate that is subject to a condition. The condition will require the applicant to practise under supervision and to complete their Qualifying Experience by a specified date.
33. More information about this type of condition – including how to have the condition removed once Qualifying Experience is complete – can be found in our

Guidance Note on Qualifying Experience and associated FAQs, which are available on our [How to become a Costs Lawyer](#) webpage.

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