
Consultation

Costs Lawyer

Code of Conduct



Closing date: 14 July 2023

Costs Lawyer Standards Board



This consultation

The Costs Lawyer Standards Board (CLSB) regulates Costs Lawyers under the framework established by the Legal Services Act 2007. To ensure that Costs Lawyers meet appropriate professional standards, the CLSB establishes requirements in relation to competency and conduct. Those requirements are set out in various regulatory arrangements, collated in the [Costs Lawyer Handbook](#).

The Costs Lawyer Code of Conduct is an important central element of these regulatory arrangements. It establishes the core principles of professional conduct to which Costs Lawyer must adhere, fostering public confidence in individual practitioners and the profession as a whole. The current version of the Code of Conduct is available [on our website](#).

From 2019 to 2023, the CLSB carried out a systematic review of all of its regulatory arrangements. The Code of Conduct is the final document to be considered under that programme of work, having been subject to review earlier this year. The review focused, in particular, on ensuring that the Code of Conduct aligns with:

- the CLSB's other updated regulatory arrangements;
- the findings of a recent [CLSB research project](#) funded by the Regulators' Pioneer Fund (the RPF project) looking at the role of Costs Lawyers in the sector;
- research into the competencies expected of a qualified Costs Lawyer;
- expectations of the CLSB's oversight regulator, the Legal Services Board (LSB), and promotion of the [regulatory objectives](#) in the Legal Services Act 2007;
- the Better Regulation Principles, and in particular ensuring that the Code does not impose unnecessarily broad regulatory burdens; and
- evidence of good practice from across the professional services sectors.

This consultation paper explains the rationale for a series of proposed changes to the Code of Conduct following the review. It raises questions that you might like to consider as part of your consultation response, although we welcome comments on any aspect of the proposals. Consultation responses should be sent to enquiries@clsb.info by **5pm on 14 July**.

Objectives of the proposed changes

The Code of Conduct was last amended in 2018, however it has not been subject to wholesale revision since its introduction in October 2011. Our review identified a number of improvements that are needed to bring the Code up to date and ensure it remains relevant to modern practice. Taken together, the proposed changes are intended to have the following impact.

- (i) The revised Code aims to strengthen the obligation on Costs Lawyers to maintain their skills and knowledge, in line with expectations set by the Legal Services Board in its new policy statement on ongoing competence.
- (ii) The revisions to the Code are intended to better reflect the CLSB's consumer outcomes framework by strengthening expectations of the role that Costs Lawyers can play in serving consumer clients (including small business clients). The proposed amendments will also strengthen conflict protections for consumers, reinforce the CLSB's diversity commitment and encourage innovation, in pursuit of the regulatory objectives in the Legal Services Act 2007.
- (iii) The revised Code incorporates changes intended to bring the Code into line with the approach of other legal regulators, where this is relevant to the practice of Costs Lawyers, for example by differentiating between professional and ultimate clients (aligning with the Bar Standards Board) and not restricting the application of the Code to professional activity (aligning with IPReg and the Solicitors Regulation Authority (SRA)). This will help promote consistency of regulation across the sector.
- (iv) The revised Code incorporates a number of recommendations from the RPF project:
 - It introduces the principle of independence, which is not referred to in the current Code but which is a core value that the RPF project found was very important for clients of Costs Lawyers. This is further underpinned by the proposed revised obligations around conflicts of interest and the differentiation of professional and ultimate clients.

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- It underlines the importance of Costs Lawyers' role in the efficient resourcing of legal matters and the role they might play in other areas, such as pricing.
 - It stresses that a Costs Lawyer's activity is not limited to authorised activities – a factor which the RPF project suggested was acting as an actual or perceived constraint on innovation.
 - It begins to make the distinction between the different practice models through which a Costs Lawyer may provide services – whether as a Costs Lawyer operating as a business, as an employer of other Costs Lawyers or as an employee of a regulated or unregulated organisation. Where obligations can be relaxed – for example because they are addressed through firm-level regulation by another legal regulator – this has been built into the amendments.
- (v) Other drafting changes are intended to tidy up the Code, making it more consistent, clear and accessible. Examples include:
- reminding Costs Lawyers that their regulatory obligations extend across all regulatory arrangements and are not limited to the Code;
 - cross-referring to the CLSB's ability to take enforcement action;
 - removing references to the Association of Costs Lawyers (ACL) as having a front-line role in regulation, in line with new Internal Governance Rules introduced by the Legal Services Board since the last revision of the Code; and
 - updating equality and diversity obligations to align with prevailing legislation and social expectations.

Throughout the review, we have been mindful that there is clear potential for regulation to add value in this market, but only if our regulatory model appropriately reflects the practicalities of that market. The proposed amendments to the Code aim to achieve this, by attempting to create clear added value for clients (whether professional or otherwise) in using regulated Costs Lawyers as distinct from unregulated providers, as well as strengthening the role that Costs Lawyers play in upholding the public interest.

Consultation question 1: Do you agree that we have focused on the right objectives in revising the Code of Conduct? Are there any other key objectives or bodies of evidence that we should take into account? If so, how?

The proposed amendments

Annex 1 to this consultation paper is a table setting out the proposed amendments to the text of the Code of Conduct. Additions are shown in red while deleted text has been struck through. Commentary on the rationale for each proposed change is provided in the righthand column of the table.

Consultation question 2: Do you agree with the proposed amendments to the Code of Conduct? Are there any additional amendments that we should consider?

Annex 2 to this consultation paper shows the amended Code of Conduct as it would appear if all the proposed changes are made. As can be seen from Annex 2, we also intend to take this opportunity to update the formatting and presentation of the Code to make it easier to navigate, separating out each of the principles into their own section.

Consultation question 3: Do you find the proposed presentation of the Code of Conduct accessible? Are there any other formatting changes we should consider to make the Code of Conduct more user-friendly?

Consultation questions

1. Do you agree that we have focused on the right objectives in updating the Code of Conduct? Are there any other key objectives or bodies of evidence that we should take into account? If so, how?
2. Do you agree with the proposed amendments to the Code of Conduct? Are there any additional amendments that we should consider?
3. Do you find the proposed presentation of the Code of Conduct accessible? Are there any other formatting changes we should consider to make the Code of Conduct more user-friendly?
4. Do you foresee any reason why the proposed changes could have a harmful impact on persons with a protected characteristic under the Equality Act 2010? If so, is there any evidence you can provide that would help us assess that impact?

Annex 1 – Explanation for proposed amendments to the Code of Conduct

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>Introduction</p> <p>This Code is made pursuant to the LSA and sets out the principles that should guide your conduct to be followed by you as a Costs Lawyer, both when delivering reserved activities and across the rest of your practice, as well as, to the extent indicated below, in your private conduct. Further, it sets out your authorised rights and works in conjunction with prevailing legislation in such a way as to regulate what you can and cannot do under your authorisation.</p> <p>The scope of your authorisation is governed by legislation but should not be interpreted as preventing you from expanding into other, unreserved areas of practice or from seeking to innovate in areas related to costs and pricing where Costs Lawyers have unique knowledge and skills. If you are unclear about how an innovation you are considering might interact with this Code or other CLSB regulatory arrangements you should contact the CLSB.</p> <p>Under section 176(1) of the LSA you must comply with this Code. Breach of this Code or of the CLSB’s wider regulatory arrangements as set out in the Costs Lawyer Handbook may result in disciplinary proceedings being brought against you by CLSB. This Code is effective on the date stated on the first page and replaces the previous Code of Conduct effective 31 October 2011.</p>	<p><i>This expanded introduction is designed to remind practitioners that their practise areas (and thus regulatory obligations) are not limited to reserved activities and to encourage innovation.</i></p> <p><i>This is a minor change proposed for clarity, to remind Costs Lawyers of their wider obligations.</i></p>
<p>Authorised Rights</p> <p>As a Costs Lawyer you are a regulated person under the LSA and are authorised to carry on the following reserved legal activities:</p> <ul style="list-style-type: none"> • The exercise of a right of audience • The conduct of litigation • The administration of oaths <p>Provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent</p>	<p><i>The proposed addition at the end of this section of the Code is designed to clarify that Costs Lawyers’ practice need not be limited to their authorised rights.</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council where:</p> <ul style="list-style-type: none"> • the proceedings are at first instance; • the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs; • the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or • the court or tribunal grants permission for you to conduct proceedings or to represent a client (or both). <p>Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:</p> <ul style="list-style-type: none"> • relate solely to costs; or • when they relate to other issues, solely those issues that are not in dispute. <p>A matter “relates to costs” if it relates to payments for legal representation, including payments in respect of pro bono representation under section 194 of the LSA, or to payments made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages. For the avoidance of doubt, this includes:</p> <ul style="list-style-type: none"> • costs between opposing parties including costs management and budgeting; • solicitor and client costs but not if and to the extent that issues of negligence arise when a lawyer competent to deal with allegations of negligence ought to be instructed instead; • legal aid, criminal costs, wasted costs or costs against third parties. <p>Further, you may administer any oath.</p> <p>The scope of this authorisation does not prevent you from offering other services as a Costs Lawyer provided you do so in accordance with this Code of Conduct and adhering to any of the CLSB’s other regulatory arrangements that are relevant.</p>	

Section of Code – Revised Text	Explanation of Proposed Amendments
<p>Seven principles of regulation</p> <p>There are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. Adherence to these principles is mandatory.</p> <p>You must:</p> <ol style="list-style-type: none"> 1. Act with honesty and integrity and maintain your independence professionalism. 2. Comply with your duty to the court and promote the good in the administration of justice. 3. Act in the best interests of each the client. 4. Provide a good quality of work and service to each client. 5. Deal with the regulators and Legal Ombudsman in an open and co-operative way. 6. Treat everyone fairly and with dignity and respect. 7. Keep your work on behalf the affairs of your clients confidential. 	<p><i>The Code has historically adopted a slightly different configuration of the professional principles than those set out in the Legal Services Act 2007 (LSA), or those adopted by other authorised regulators (which are also variants of the LSA, section 1(3)). Section 1(3) defines the “professional principles” as follows:</i></p> <p><i>(a) that authorised persons should act with independence and integrity,</i></p> <p><i>(b) that authorised persons should maintain proper standards of work,</i></p> <p><i>(c) that authorised persons should act in the best interests of their clients,</i></p> <p><i>(d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and</i></p> <p><i>(e) that the affairs of clients should be kept confidential.</i></p> <p><i>The proposed amendments to the principles are designed to maintain the structure of the current Code, but with minor changes as follows:</i></p> <ul style="list-style-type: none"> • <i>Principle 1 is amended to include independence in place of professionalism. The latter concept is reflected already in principle 4 in particular. Independence is a core value that is not currently mentioned in the Code and which emerged from the RPF project findings as an attribute that clients particularly value.</i> • <i>Principle 2 strengthens the duty to the administration of justice beyond a duty to comply, toward encouraging the promotion of good administration of justice and, by implication, better allocation of resources, including those of the court.</i> • <i>Principle 3 is amended to reflect the fact that Costs Lawyers are often not acting directly for a client but through a professional client.</i> • <i>Principle 6 is amended to incorporate the concept of fairness as well as dignity and respect. This is a more accurate reflection of prevailing equality, diversity and inclusion (EDI) norms and equality legislation.</i> • <i>Principle 7 is broadened slightly to reflect the fact that Costs Lawyers will have access to</i>

Section of Code – Revised Text	Explanation of Proposed Amendments
	<i>client information beyond simply the work that they are undertaking on the client’s behalf.</i>
PRINCIPLE 1: Act with honesty and integrity and maintain your independence professionalism	
<p>1.1 You must act honestly, professionally and with integrity, not only in all your dealings in your professional life but also in your private life where this might reasonably be considered to undermine your adherence to the core ethical principles of the profession.</p> <p>1.1a You must act independently in the interests of the good administration of justice. This duty overrides your duties to your client and applies both to your work before the court and in conducting litigation.</p> <p>1.2 You must not attempt to carry on a reserved legal activity other than those you are authorised to undertake under the LSA. Where you carry out unreserved legal activities within the same business, or if you hold yourself out as a Costs Lawyer in any other business, you must adhere to this Code of Conduct across these other activities.</p> <p>1.3 You must not give false or misleading information to anyone with whom you deal.</p> <p>1.4 When you supply or offer your services as a Costs Lawyer, you must not be misleading or inaccurate when you publicise yourself as a Costs Lawyer or your business. about the nature or scope of the services you are offering, who will be legally responsible for undertaking them, the extent to which they are covered by regulation and insurance, the terms on which they will be supplied or the basis on which they will be charged.</p> <p>1.5 You must not: (i) make an unsolicited approach by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business; or (ii) accept referrals from a third party</p>	<p><i>1.1. Professionalism is deleted here as this is implicit in the other core values. The application of the principles is not defined in the current Code and the current drafting suggests these are narrowly focused on professional activities as a Costs Lawyer compared, for example, to the application of other legal regulators’ codes. See for example IPReg’s new Code that was approved by the LSB in February 2023, which provides: “These Principles set out the ethical behaviours that IPReg expects all regulated persons to uphold. This includes not only in their professional life but also their private life where it is relevant to their practice as a regulated person.”</i></p> <p><i>1.1a Independence is not mentioned as a core value in the current Code, but the RPF project findings suggested that the most significant added value a Costs Lawyer could bring to the legal system was as an independent assessor of costs. It is expanded upon in the sections on the court and client’s best interests below. Learnings from recent disciplinary investigations also highlight the need to make explicit the interaction between independence / integrity and other ethical principles (such as keeping a client’s affairs confidential).</i></p> <p><i>1.2 This proposed addition makes clear that the Code applies not just to the exercise of reserved activities. It also serves to remind Costs Lawyers that they can carry out other activities beyond core costs law services.</i></p> <p><i>1.4 This obligation brings Costs Lawyers into line with the obligations on barristers. It highlights the importance of all clients – including professional clients – understanding what services are provided within the scope of regulatory protections.</i></p>

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<p>who made an unsolicited approach to the private individual (lay person) being referred.</p> <p>1.6 You must not enter into any fee arrangements which are unlawful.</p> <p>1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.</p> <p>1.8 You must only use the CLSB’s regulatory marks in compliance with the terms of use published on the CLSB website.</p>	<p><i>1.8 This follows up on a recommendation from the RPF project to tighten up/clarify the use of this mark. Whilst the inclusion here does not represent any material change, it lays the foundations for tightening up in due course (for example, linking more explicitly to Costs Lawyers working in a particular way such as in law firms led by Costs Lawyers).</i></p>
<p>PRINCIPLE 2: Comply with your duty to the court in the and promote the good administration of justice</p>	
<p>2.1 You must at all times act within the law.</p> <p>2.2 You must not knowingly or recklessly either mislead the court, attempt to mislead the court or allow the court to be misled.</p> <p>2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.</p> <p>2.4 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.</p> <p>2.5 You must support the good administration of justice by promoting the appropriate and cost-effective use of the resources of the court.</p>	<p><i>2.2 This is an addition to align Costs Lawyer obligations to those of barristers.</i></p> <p><i>2.4 This is an addition designed to reinforce the role of Costs Lawyers as independent actors in the justice system.</i></p> <p><i>2.5 This is a proposed new obligation designed to underline the unique role that Costs Lawyers can play in the justice system to support the proper use of court resources.</i></p>
<p>PRINCIPLE 3: Act in the best interests of each the client</p>	
<p>3.1 You must always act in the client’s best interests. As a Costs Lawyer you may be instructed by another regulated person (“professional client”) to act for an underlying client (“ultimate client”). You must act at all times to ensure the in the best interests of each client, whether a professional client or an ultimate client, ’s interest is paramount except where this conflicts with your duty to act independently in the interests of the good administration of justice duties to the court or where otherwise permitted by law.</p> <p>3.1a You must decline to act:</p>	<p><i>3.1 This promotes the distinction between the Costs Lawyer’s professional client and ultimate client, which was a key recommendation from the RPF project. It also emphasises again the overriding nature of the duty of independence (see new 1.1a above).</i></p> <p><i>3.1a This proposed addition provides further nuance to the conflict assessment and brings it into line with the SRA’s Code of Conduct for Solicitors. Our guidance already reflects this nuance and</i></p>

Section of Code – Revised Text	Explanation of Proposed Amendments
<ul style="list-style-type: none"> – if it would not be in the ultimate client’s best interests; or – if that client’s interests conflict directly with your own; or – if that client’s interests conflict with those of your professional client or another client. You may, however, act if each client has substantially common interests and has given informed consent. 	<p><i>highlights that the Code is too blunt an instrument as current drafted.</i></p>
<p>3.2 You must provide for an effective complaints procedure for handling complaints from both professional and ultimate clients, covering issues relating to your professional conduct as well as the service you provide, in line with the CLSB’s guidance on complaints procedures. (first tier complaints handling procedure) which is simple and transparent and ensures that a complaint can be made by any reasonable means and which takes into account the individual needs of clients (in particular the needs of vulnerable clients).</p>	<p><i>3.2 This again reflects the distinction between professional and ultimate clients and emphasises the need for the ultimate client to have a direct route for complaining to the Costs Lawyer. It also mirrors recent amendments to our Disciplinary Rules and Procedures which ensure that both conduct and service complaints are considered at first tier. (Note that our guidance and audit processes make clear that individual / additional complaints procedures are not required by practitioners working exclusively in-house or for SRA regulated firms that have firm-wide procedures that comply with the SRA Code of Conduct for Firms.)</i></p>
<p>3.3 You must ensure that complaints are dealt with promptly (within a maximum eight week period from the date of receipt) openly and fairly and that appropriate provisions for redress exist.</p>	
<p>3.4 You must ensure that advise new clients are advised in writing when instructions are first received of:</p> <ul style="list-style-type: none"> (i) An estimate of fees / details of charging structure and where that estimate subsequently becomes inaccurate or that charging structure changes provide an updated estimate / notice of revised charges. (ii) The right to complain. (iii) How to complain i.e. the first tier complaints handling procedure that applies to the services you will provide. (iv) The period within which you will deal with complaints under your first tier complaints handling procedure. (v) If applicable, the client’s right to refer their complaint to the Legal Ombudsman in certain circumstances. the event the matter is not resolved to the satisfaction of the client or the matter has not been resolved within eight weeks of the complaint being made. 	<p><i>3.4 This mirrors more closely the drafting in the SRA’s Codes of Conduct – it does not make each Costs Lawyer responsible for sending client care letters, not relevant to employees, but does require them to make sure arrangements are in place.</i></p> <p><i>3.4(iv), (vi) and (vii) are redundant as they are included in our extensive guidance on complaint handling. As drafted, they give the incorrect impression that this information is more important than the other information about complaints that must be provided to clients, as set out in detail in the guidance.</i></p> <p><i>The addition in 3.4(v) reflects the fact that right of access to the Legal Ombudsman is limited.</i></p>

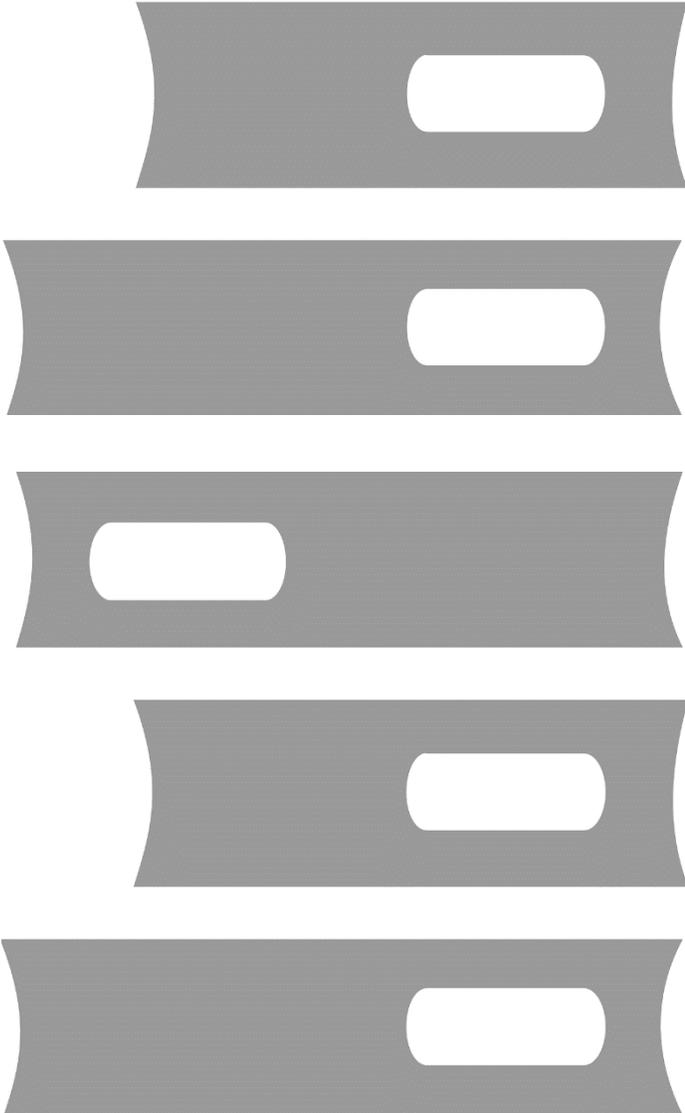
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<p>(vi) Applicable time limits for referring the complaint to the Legal Ombudsman.</p> <p>(vii) The Legal Ombudsman’s contact details.</p> <p>3.5 You must identify and rectify any systemic client complaint issues that are causing, or are likely to cause, client complaints, taking steps to do so promptly upon discovery.</p> <p>3.6 You must not accept client money save for disbursements, for which you are liable on behalf of your client, and payment of your proper professional fees. This does not prevent you from using the services of third party financial institutions, such as escrow accounts or third party managed accounts, to deal with client money (including advance payment of your fees) so long as the terms of those services are agreed in advance with your client.</p> <p>3.7 You must provide required documentation and information on an application for a practising certificate and in the event of any complaint investigation conducted by CLSB or the Legal Ombudsman.</p> <p>3.8 You must ensure that you maintain professional indemnity insurance that which complies with the Practising Rules requirements of the CLSB prevailing at the time and promptly provide evidence of that insurance cover if requested by a client, CLSB, ACL or the Legal Ombudsman.</p>	<p>3.5 <i>This suggested addition is intended to encourage Costs Lawyers to take proactive action to rectify potential complaints issues.</i></p> <p>3.6 <i>This addresses a recommendation from the RPF project findings. Costs Lawyers have sometimes been reluctant to act for individual consumer clients because of the risk of not getting paid. Taking fees on account through TPMAs or other independent financial structures is not inconsistent with the existing principle in 3.6. We took the opportunity in 2020 to emphasise this in our guidance, and we have the opportunity now to clarify this in the Code itself to help encourage uptake.</i></p> <p>3.7 <i>This provision is now covered in the later section on cooperating with your regulator, which is a more natural fit.</i></p> <p>3.8 <i>The deletion of ACL brings the Code in line with the prevailing Internal Governance Rules.</i></p>
<p>PRINCIPLE 4: Provide a good quality of work and service to each client</p>	
<p>4.1 You must ensure that you only undertake work for which you are properly qualified and which you are competent to undertake.</p> <p>4.2 Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you. If you do not have the knowledge, skills or experience to undertake the work you must decline it.</p> <p>4.3 You must ensure that you carry out your professional work in a timely manner with proper regard for standards of professional service and care.</p> <p>4.4 You must maintain your competence to carry out your role and keep your professional knowledge and skills up to date. You must keep your professional knowledge up to date by undertaking relevant training in accordance with current Practising Rules.</p>	<p>4.1 <i>This addition references the need for ongoing competence and paves the way for our implementation of the LSB’s policy statement on ongoing competence.</i></p> <p>4.4 <i>This amendment suggests broadening the obligation from simply the obligation to keep “knowledge” up to date, to encompass a wider “competence” obligation, in line with the inclusion of skills and attributes in the Competency Statement.</i></p>

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<p>4.5 You must keep the client regularly informed as to the progress of the work and keep accurate records of that work.</p> <p>4.6 You must 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) that work.</p>	<p>4.6 <i>This expands on the current version of 4.6 to reflect the potential greater role for Costs Lawyers in pricing and costs, and the importance of clients understanding not only costs incurred for work done on their behalf but also their potential liability in relation to the whole matter.</i></p>
<p>PRINCIPLE 5: Deal with the regulators and the Legal Ombudsman in an open and co-operative way</p>	
<p>5.1 You must be open, honest and co-operate in your dealings with the CLSB, ACL, other regulators and the Legal Ombudsman</p> <p>5.1a You must provide accurate and complete documentation and information on an application for a practising certificate and you must promptly notify the CLSB of any subsequent event that impacts on your fitness to be a Costs Lawyer.</p> <p>5.1b You must responding to any requests promptly and fully within 14 calendar days to any requests for information from the CLSB with full and accurate information. You must provide the CLSB with access to information and documentation if requested to do so.</p> <p>5.2 You must promptly notify the CLSB of any breach of its regulatory arrangements this Code by yourself or other Costs Lawyers and notify any other approved regulator, as appropriate, if you reasonably believe there has been a serious breach of their regulatory arrangements by any person regulated by them (including you).</p> <p>5.3 You must not take any action to dissuade or prevent anyone from reporting you to the CLSB or Legal Ombudsman, or victimise anyone who has done so.</p> <p>5.4 You must promptly comply with any request, notice or disciplinary outcome issued to you by the CLSB under its regulatory arrangements.</p>	<p>5.1 <i>The deletion of ACL brings the Code in line with the prevailing Internal Governance Rules.</i></p> <p>5.1a <i>This text has partially moved from principle 3.7 (acting in the client’s best interests). The additional text, requiring a Costs Lawyer to update the CLSB of further developments, reinforces the obligation in Practising Rule 4.1. It is intended to emphasise the need for notifications to be made at any time and reflects the same emphasis that the SRA puts on these issues.</i></p> <p>5.1b <i>This removes the arbitrary deadline of 14 calendar days.</i></p> <p>5.2 <i>This proposes broadening the reporting requirement to take into account the role of Costs Lawyers in SRA regulated firms in particular and covers all regulatory arrangements, not just the Code. It brings the CLSB requirements into line with other approved regulators’ codes and promotes cooperation between regulatory bodies in the interests of clients and the public.</i></p> <p>5.3 <i>This brings the Code into line with other regulators’ codes in relation to action to undermine cooperation.</i></p> <p>5.4 <i>This new provision is intended to fill a gap in the current Code to ensure that Costs Lawyers act upon requests from the CLSB. Although this is implicit in existing principle 5.1 of the Code, new principle 5.4 matches obligations imposed by other legal regulators and underpins the effectiveness of the Disciplinary Rules and Procedures.</i></p>

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PRINCIPLE 6: Treat everyone fairly and with dignity and respect	
<p>6.1 You must treat all clients, staff or colleagues and third parties fairly and with dignity and respect. You must not bully or harass them, or unfairly should encourage equality of opportunity and must not unlawfully discriminate against them (either directly or indirectly) victimise or harass them on the grounds of age, disability, race (including colour, ethnic or national origin, nationality and citizenship), sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief.</p> <p>6.2 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..</p> <p>6.3 If you are an employer, you must:</p> <ul style="list-style-type: none"> - 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- <p>6.3—You must</p> <ul style="list-style-type: none"> - make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities. 	<p>6.1. This adds fairness into the discrimination principle and mirrors more closely the protected characteristics in the Equalities Act 2010. It aligns with new text at paragraph 1.5 of the SRA’s Code of Conduct for Solicitors, which refers to bullying and harassment without linking these to protected characteristics (noting that this may be relevant to Costs Lawyers working in firms regulated by the SRA).</p> <p>6.2 This incorporates the commitment of legal regulators in their joint statement “Tackling Counter-Inclusive Misconduct Through Disciplinary Processes” (May 2022).</p> <p>6.3 This makes a distinction between conduct that can reasonably be expected of a Costs Lawyer acting as an employer as compared to individual practitioners.</p>
PRINCIPLE 7: Keep the affairs your work on behalf of your clients confidential	
<p>7.1 You must keep the affairs of clients, including or former clients, confidential unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.</p>	<p>7.1 This is a minor drafting change, adjusting the principle to bring it into line with the body of the Code.</p>

Annex 2 - Proposed Code of Conduct

Costs Lawyer Code of Conduct



Consultation Draft: [Date] 2023

Costs Lawyer Standards Board



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Definitions

CLSB	The Costs Lawyer Standards Board
Costs Lawyer	A Costs Lawyer with a current practising certificate issued by the CLSB
Code	This Code of Conduct made pursuant to the LSA
LSA	Legal Services Act 2007

Introduction

This Code is made pursuant to the LSA and sets out the principles that should guide your conduct as a Costs Lawyer, both when delivering reserved activities and across the rest of your practice, as well as, to the extent indicated below, in your private conduct. Further, it sets out your authorised rights and works in conjunction with prevailing legislation in such a way as to regulate what you can and cannot do under your authorisation.

The scope of your authorisation is governed by legislation but should not be interpreted as preventing you from expanding into other, unreserved areas of practice or from seeking to innovate in areas related to costs and pricing where Costs Lawyers have unique knowledge and skills. If you are unclear about how an innovation you are considering might interact with this Code or other CLSB regulatory arrangements you should contact the CLSB.

Under section 176(1) of the LSA you must comply with this Code. Breach of this Code or of the CLSB's wider regulatory arrangements as set out in the Costs Lawyer Handbook may result in disciplinary proceedings being brought against you by the CLSB. This Code is effective on the date stated on the first page.

Authorised rights

As a Costs Lawyer you are a regulated person under the LSA and are authorised to carry on the following reserved legal activities:

- The exercise of a right of audience
- The conduct of litigation
- The administration of oaths

Provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council where:

- the proceedings are at first instance;

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- the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs;
 - the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or
 - the court or tribunal grants permission for you to conduct proceedings or to represent a client (or both).

Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:

- relate solely to costs; or
- when they relate to other issues, solely those issues that are not in dispute.

A matter “relates to costs” if it relates to payments for legal representation, including payments in respect of pro bono representation under section 194 of the LSA, or to payments made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages. For the avoidance of doubt, this includes:

- costs between opposing parties including costs management and budgeting;
- solicitor and client costs but not if and to the extent that issues of negligence arise when a lawyer competent to deal with allegations of negligence ought to be instructed instead;
- legal aid, criminal costs, wasted costs or costs against third parties.

Further, you may administer any oath.

The scope of this authorisation does not prevent you from offering other services as a Costs Lawyer provided you do so in accordance with this Code of Conduct and adhering to any of the CLSB’s other regulatory arrangements that are relevant.

Seven principles of regulation

There are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. Adherence to these principles is mandatory.

You must:

1. Act with honesty and integrity and maintain your independence.
2. Comply with your duty to the court and promote the good administration of justice.
3. Act in the best interests of each client.
4. Provide a good quality of work and service to each client.
5. Deal with the regulators and Legal Ombudsman in an open and co-operative way.
6. Treat everyone fairly and with dignity and respect.
7. Keep the affairs of your clients confidential.

PRINCIPLE 1

Act with honesty and integrity and maintain your independence

- 1.1 You must act honestly and with integrity, not only in your professional life but also in your private life where this might reasonably be considered to undermine your adherence to the core ethical principles of the profession.
 - 1.1a You must act independently in the interests of the good administration of justice. This duty overrides your duties to your client and applies both to your work before the court and in conducting litigation.
- 1.2 You must not attempt to carry on a reserved legal activity other than one you are authorised to undertake under the LSA. Where you carry out unreserved legal activities within the same business, or if you hold yourself out as a Costs Lawyer in any other business, you must adhere to this Code across these other activities.
- 1.3 You must not give false or misleading information to anyone with whom you deal.
- 1.4 When you supply or offer your services as a Costs Lawyer, you must not be misleading or inaccurate about the nature or scope of the services you are offering, who will be legally responsible for undertaking them, the extent to which they are covered by regulation and insurance, the terms on which they will be supplied or the basis on which they will be charged.

PRINCIPLE 1

**Act with honesty
and integrity
and maintain
your
independence**

- 1.5 You must not:
 - (i) make an unsolicited approach by any means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business; or
 - (ii) accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.
- 1.6 You must not enter into any fee arrangements which are unlawful.
- 1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.
- 1.8 You must only use the CLSB's regulatory marks in compliance with the terms of use published on the CLSB website.

PRINCIPLE 2

Comply with your duty to the court and promote the good administration of justice

- 2.1 You must at all times act within the law.
- 2.2 You must not knowingly or recklessly either mislead the court, attempt to mislead the court, or allow the court to be misled.
- 2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.
- 2.4 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.
- 2.5 You must support the good administration of justice by promoting the appropriate and cost-effective use of the resources of the court.

PRINCIPLE 3

Act in the best interests of each client

- 3.1 You must always act in the client’s best interests. As a Costs Lawyer you may be instructed by another regulated person (“professional client”) to act for an underlying client (“ultimate client”). You must act at all times in the best interests of each client, whether a professional client or an ultimate client, except where this conflicts with your duty to act independently in the interests of the good administration of justice or where otherwise permitted by law.
 - 3.1a You must decline to act:
 - (i) if it would not be in the ultimate client’s best interests;
 - (ii) if that client’s interests conflict directly with your own; or
 - (iii) if that client’s interests conflict with those of your professional client or another client. You may, however, act if each client has substantially common interests and has given informed consent.
 - 3.2 You must provide for an effective complaints procedure for handling complaints from both professional and ultimate clients, covering issues relating to your professional conduct as well as the service you provide, in line with the CLSB’s guidance on complaints procedures.
 - 3.3 You must ensure that complaints are dealt with promptly (within a maximum eight week period from the date of receipt) openly and fairly and that appropriate provisions for redress exist.

PRINCIPLE 3

Act in the best interests of each client

- 3.4 You must ensure that new clients are advised in writing when instructions are first received of:
- (i) an estimate of fees / details of charging structure and where that estimate subsequently becomes inaccurate or that charging structure changes provide an updated estimate / notice of revised charges;
 - (ii) the right to complain;
 - (iii) how to complain i.e. the complaints handling procedure that applies to the services you will provide; and
 - (iv) If applicable, the client's right to refer their complaint to the Legal Ombudsman in certain circumstances.
- 3.5 You must identify and rectify any systemic issues that are causing, or are likely to cause, client complaints, taking steps to do so promptly upon discovery.
- 3.6 You must not accept client money save for disbursements and payment of your proper professional fees. This does not prevent you from using the services of third party financial institutions, such as escrow accounts or third party managed accounts, to deal with client money (including advance payment of your fees) so long as the terms of those services are agreed in advance with your client.
- 3.7 You must ensure that you maintain professional indemnity insurance that complies with the Practising Rules and promptly provide evidence of that insurance cover if requested by a client, CLSB or the Legal Ombudsman.

PRINCIPLE 4

Provide a good quality of work and service to each client

- 4.1 You must ensure that you only undertake work for which you are properly qualified and which you are competent to undertake.
- 4.2 Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you. If you do not have the knowledge, skills or experience to undertake the work you must decline it.
- 4.3 You must ensure that you carry out your professional work in a timely manner with proper regard for standards of professional service and care.
- 4.4 You must maintain your competence to carry out your role and keep your professional knowledge and skills up to date.
- 4.5 You must keep the client regularly informed as to the progress of work and keep accurate records of that work.
- 4.6 You must 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).

PRINCIPLE 5

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

- 5.1 You must be open, honest and co-operate in your dealings with the CLSB, other regulators and the Legal Ombudsman.
- 5.1a You must provide accurate and complete documentation and information on an application for a practising certificate and you must promptly notify the CLSB of any subsequent event that impacts on your fitness to be a Costs Lawyer.
- 5.1b You must respond promptly to any requests from the CLSB with full and accurate information. You must provide the CLSB with access to information and documentation if requested to do so.
- 5.2 You must promptly notify the CLSB of any breach of its regulatory arrangements by yourself or other Costs Lawyers and notify any other approved regulator, as appropriate, if you reasonably believe there has been a serious breach of their regulatory arrangements by any person regulated by them (including you).
- 5.3 You must not take any action to dissuade or prevent anyone from reporting you to the CLSB or Legal Ombudsman, or victimise anyone who has done so.
- 5.4 You must promptly comply with any request, notice or disciplinary outcome issued to you by the CLSB under its regulatory arrangements.

PRINCIPLE 6

Treat everyone fairly and with dignity and respect

- 6.1 You must treat all clients, colleagues and third parties fairly and with dignity and respect. You must not bully or harass them, or unfairly discriminate against them (either directly or indirectly) on the grounds of age, disability, race (including colour, ethnic or national origin, nationality and citizenship), sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief.
- 6.2 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.
- 6.3 If you are an employer, you must:
 - (i) 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; and
 - (ii) make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities.

PRINCIPLE 7

Keep the affairs of your clients confidential

- 7.1 You must keep the affairs of clients, including former clients, confidential unless disclosure is required or allowed by law or if the client consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.