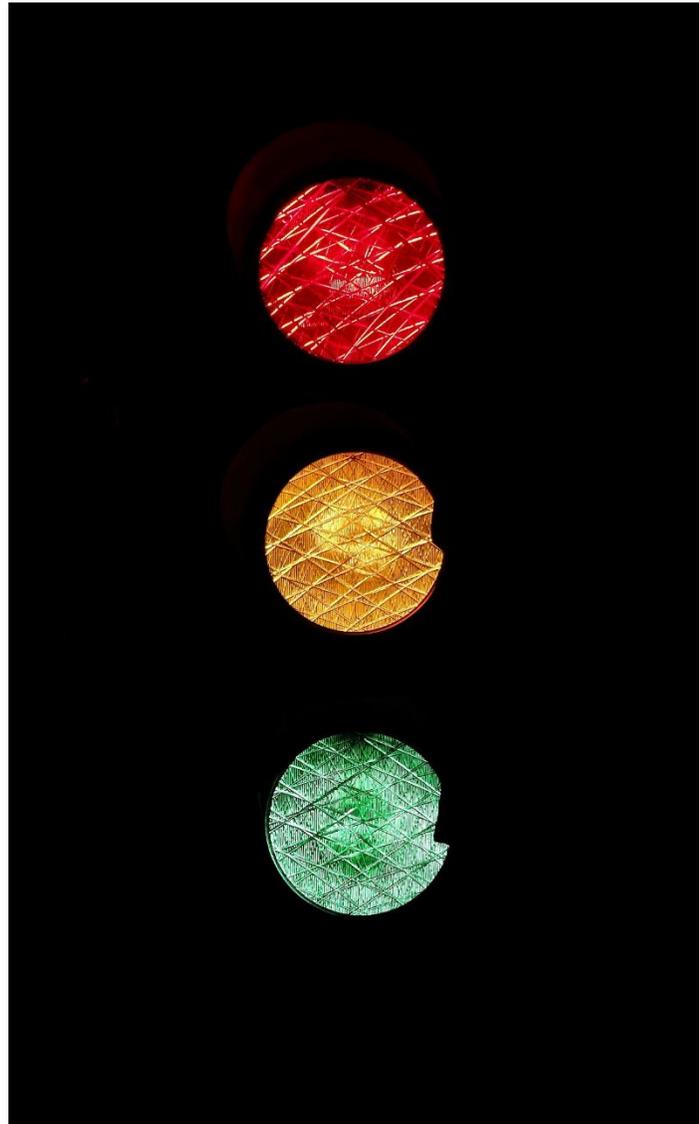

Consultation

Disciplinary Rules and Procedures



26 September 2019

Costs Lawyer Standards Board

CLSB
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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 imposes requirements in relation to competency and conduct. These requirements are set out in various rules – such as the Code of Conduct and the Continuing Professional Development (CPD) Rules – which are collated in the Costs Lawyer Handbook.

The CLSB's Disciplinary Rules and Procedures (DR&P) establish the processes to be followed where the CLSB receives information indicating that a Costs Lawyer might have breached the CLSB's rules. You can find the current version of the DR&P [on our website](#).

The DR&P were last amended in 2013. They now require updating to ensure they remain current and fit for purpose. To achieve this, the CLSB carried out a review of the DR&P earlier this year. In undertaking the review we have considered evidence of the DR&P's effectiveness from previous disciplinary proceedings (including feedback from participants in Conduct Committee hearings) as well as evidence of best practice from the wider legal services community (including the findings of the Legal Services Board's recent [report on Enforcement in Legal Services Regulation](#)).

As a result of our review, we propose to adopt a new version of the DR&P as set out in Annex 1. We do not intend to fundamentally change our approach to enforcement. Rather, the new DR&P seek to clarify, streamline and improve our existing processes.

This consultation paper explains the main changes between the existing and proposed DR&P. It raises questions that you might like to consider as part of your response, although we welcome comments on any aspect of the proposal.

Consultation responses should be sent to enquiries@clsb.info by **5pm on 15 November 2019**.

Summary of key proposed changes

Introduction of interim suspension orders

Other regulators of legal services professionals (such as the Solicitors Regulation Authority) have a power to impose interim orders or remedies under their disciplinary rules. This allows the regulator to take action to protect consumers or the wider public prior to the final outcome of a disciplinary process.

Under the existing DR&P, the CLSB does not have this power. In early 2019, the Legal Services Board asked the CLSB to *“review whether, in the absence of interim orders powers, it is able to ensure consumers and others are protected should immediate suspension of a costs lawyer’s authorisation be needed”*.

Following a review of previous disciplinary proceedings handled by the CLSB, we did not identify any cases in which it was felt that an interim order should or could have been imposed had a power existed to allow this. However, we acknowledge that a case could arise in which an interim order may be required to protect the public interest in the future. We therefore propose to introduce a power to make interim orders under the new DR&P (see rule 4). The consequence of an interim order being imposed would be the temporary suspension of a Costs Lawyer’s practising certificate.

Our review of the approach to interim orders taken by other regulatory bodies showed that there is no single, consistent approach that is adopted as best practice across the market. We have therefore proposed a process that best fits within the CLSB’s DR&P framework, balancing considerations of proportionality, procedural fairness and workability. We propose that the power will only be exercisable by the CLSB following consideration by an independent Lay Panel Member. If an order is imposed, the relevant Costs Lawyer can apply to have it lifted at any time and the determination of that application by the Lay Panel Member is subject to appeal.

Consultation question 1: Does the proposed interim order power (in rule 4) strike the right balance between proportionality, procedural fairness and workability?

Clarification of roles

Under the existing DR&P, there is no single point of contact for the people involved in the disciplinary process (including the Costs Lawyer, Complainant, witnesses and Panel Members). Many of these parties will not have been involved with a disciplinary process before, or will not be familiar with the CLSB's specific procedures. We therefore propose to introduce the role of a Case Manager to assist parties with administrative and procedural elements of a case (see rule 6.3).

The concept of a Case Manager is used by other regulators and is aligned with the Legal Services Board's requirement that DR&P processes should facilitate parties being kept updated on progress and outcomes.

The role of the CLSB's CEO has also been clarified under the new DR&P. The existing rules refer to certain actions and decisions being taken by the CEO; the proposed rules clarify that these actions and decisions are taken by or on behalf of the CLSB – as the regulatory body – and will be considered by the most appropriate people within the organisation. The CLSB's board (to which the CEO is accountable) has ultimate responsibility for the CLSB's activities.

Consultation question 2: Do you agree with the proposal to introduce a Case Manager role?

Public vs private hearings

Conduct Committee hearings convened by the CLSB have historically been held in private. This no longer reflects the practice of other regulators and could give rise to concerns about transparency and fairness. We therefore propose to introduce a process (see rule 6.4) to publish details of any pending Conduct Committee hearing on the CLSB website and enable interested parties to observe the hearing. The Conduct Committee will retain ultimate control over the proceedings, including the power to ask members of the public to leave if their conduct is considered unacceptable.

We propose to retain our procedure for appeals being considered on paper. We consider this to be proportionate in circumstances where a Costs Lawyer will have had the opportunity to be heard in person at first instance and where the Conduct Appeal Committee does not consider the facts of the case afresh.

Consultation question 3: Are there any specific circumstances in which Conduct Committee hearings should be held in private?

Publication of outcomes

The new DR&P cover publication of disciplinary outcomes in rule 3, bringing the CLSB's procedures for publication into line with other proposed changes to the rules (for example, rule 3.4 covers the publication of interim suspension orders). We also propose to clarify that the outcome of a disciplinary process will not be published until it is final. That is, an outcome will not usually be published until the time for lodging an appeal has passed and, if an appeal is lodged, publication will not occur until the appeal has been determined or withdrawn.

Proposed rule 3 underpins, and is augmented by, the CLSB's Policy on Publication of a Disciplinary Outcome. That Policy will be updated to reflect the provisions of the new DR&P that are ultimately adopted (following this consultation).

Consultation question 4: Are any other provisions needed to bring the CLSB's rules for the publication of outcomes into line with other proposed changes to the DR&P?

Constitution of Panel

The CLSB currently has a pool of Panel Members who were recruited upon the CLSB's inception in 2011. Those Panel Members are called upon to constitute Conduct Committees and Conduct Appeal Committees. Given the small number of disciplinary hearings convened by the CLSB (due to the comparatively small number of Costs Lawyers compared to, for example, solicitors and barristers), our pool of Panel Members is inevitably small. This has created practical difficulties in arranging disciplinary hearings,

in terms of coordinating the availability of all parties whilst ensuring there is no undue delay.

We therefore propose to retain our existing pool of Panel Members, but introduce the option of appointing additional Panel Members on an ad hoc basis should the need arise (see Definitions in the proposed DR&P). All Panel Members would (as now) be recruited on the basis of their expertise and independence, and would agree to adhere to the CLSB’s Panel Member Code of Conduct. This would ensure our disciplinary processes are more flexible, responsive, timely and thus fair for any Costs Lawyer involved in a hearing.

Consultation question 5: Do you agree that the DR&P should allow for the appointment of additional Panel Members on an ad hoc basis, subject to the safeguards described?

Costs and financial penalties

The DR&P provide for fixed costs to be paid to the CLSB where a disciplinary finding is made against a Costs Lawyer. This payment represents a contribution toward the costs of administering the proceedings, thereby mitigating the burden on compliant Costs Lawyers who fund the CLSB’s regulatory activities through practising certificate fees.

Under the proposed DR&P, the value of fixed costs has been revised to better reflect the actual costs incurred in managing disciplinary processes and to account for inflationary pressure since the level of fixed costs was first set in 2011. The proposed changes are summarised in the table below.

Level of proceedings	Current £	Proposed £
Level one	250	500
Level two	1,000	1,250
Level three	1,500	1,250 (level 2) + 1,250 (level 3) = 2,500

The level of financial penalties that can be imposed under the DR&P have also been reviewed to ensure that the impact of inflation over time does not undermine their deterrent effect. While the level of the financial penalty is at the discretion of the

Conduct Committee (up to the stated maximum), guidance will be introduced to assist the Conduct Committee in determining the level of any penalty imposed.

We also propose removing the power of the Conduct Appeal Committee (at level three) to increase the value of a financial penalty imposed by the Conduct Committee (at level two). This is to ensure that the financial penalty structure does not have the unintended consequence of discouraging Costs Lawyers from bringing meritorious appeals against Conduct Committee decisions. The proposed changes are summarised in the table below.

Level of proceedings	Current £	Proposed £
Level one	Nil	Up to 500 (only where agreed)
Level two	Up to 2,000	Up to 5,000
Level three	Up to 4,000	Up to 5,000 (and no greater than the amount imposed at level two)

Consultation question 6: Are the proposed financial penalties sufficient to deter conduct that falls below the standards expected of a Costs Lawyer?

Overarching considerations

In drafting the proposed DR&P, we have also been mindful to align our processes with:

- Article 6 of the European Convention on Human Rights (ECHR), which establishes the right to a fair trial; and
- the Legal Services Board’s requirement that enforcement processes are: (i) consistent; (ii) independent; (iii) risk and evidence based; (iv) documented; (v) transparent; (vi) focused on consumer protection, maintaining professional principles and protecting the public interest.

Consultation question 7: Are there any other overarching considerations that should be taken into account? How do our proposals need to be changed to reflect those considerations?

Annex 1 – Proposed new DR&P

EFFECTIVE DATE: [•]

Definitions

The definitions below form part of these Disciplinary Rules and Procedures.

ACL	Association of Costs Lawyers
Case Manager	Person appointed by the CLSB to assist in the administration of a disciplinary matter at level two or three, who may be a person employed by the CLSB
CLSB	Costs Lawyer Standards Board, acting as an approved regulator under the LSA following delegated authority by the ACL on 31 October 2011
CoC	Costs Lawyer Code of Conduct effective at the time a Principle might have been breached
Complaint	Information established by the CLSB under its supervision arrangements or information received from a third party (natural, legal or commercial) which relates to a potential breach of a Principle by a Costs Lawyer
Complainant	The CLSB, or a person (natural, legal or commercial) who brings information to the attention of the CLSB that a Principle might have been breached by a Costs Lawyer
Costs Lawyer	A Costs Lawyer authorised and regulated by the CLSB
DR&P	These Disciplinary Rules and Procedures
Lay Person / Non-Lay Person	As defined in Schedule 1 paragraph 2(4) of the LSA
LSA	Legal Services Act 2007
Panel Member	An individual appointed by the CLSB to serve on a Conduct Committee or Conduct Appeal Committee who: (i) is independent of the CLSB;

	<p>(ii) has been neither an ACL Council member nor a non-executive director of the CLSB for a period of two years before being appointed as a Panel Member; and</p> <p>(iii) has agreed in writing to adhere to the terms of the CLSB’s Panel Member Code of Conduct and any procedural guidance that the CLSB may issue for Panel Members from time to time.</p>
Principle	<p>Any one or more of the seven principles a Costs Lawyer must comply with under the CoC, namely:</p> <ol style="list-style-type: none"> 1. Act with integrity and professionalism 2. Comply with your duty to the court in the administration of justice 3. Act in the best interests of your 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 with dignity and respect 7. Keep your work on behalf of your client confidential <p>The Principles are underpinned by CLSB rules, such as Practising Rules and CPD Rules, contained in the CLSB Handbook. A potential breach of a Principle may therefore involve breach of a rule and a potential breach of a rule may indicate the breach of a Principle. For this reason, a reference to a Principle in these DR&P includes a reference to any associated CLSB rule.</p>
Regulatory Objectives	As defined in section 1(1) of the LSA

Background

These DR&P are made pursuant to the LSA, which requires the CLSB to act in a way that it considers most appropriate for the purposes of meeting the Regulatory Objectives. The CoC sets out the Principles that a Costs Lawyer must uphold in order to meet the fundamental professional standards required of a Costs Lawyer. The Principles are underpinned by CLSB rules, such as Practising Rules and CPD Rules. These DR&P establish processes for determining whether a Costs Lawyer has breached a Principle and/or an associated rule, as well as the consequences of any such breach. These DR&P are published in the CLSB Handbook.

Objectives

The main aim of these DR&P is to promote the Regulatory Objectives, in particular:

- (i) protecting and promoting the public interest;
- (ii) supporting the constitutional principle of the rule of law;
- (iii) protecting and promoting the interests of consumers;

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- (iv) encouraging an independent, strong, diverse and effective legal profession;
 - (v) promoting and maintaining adherence to the professional principles.

These DR&P aim to be fair, consistent, transparent and proportionate procedures for considering the conduct of Costs Lawyers. They also aim to provide a credible deterrent to non-compliance with professional standards.

Outcome

The desired outcome under these DR&P is that consumers of Costs Lawyers' services, the general public, the regulated community and individual Costs Lawyers are confident that the CLSB takes appropriate action where a Costs Lawyer has acted or continues to act in a way which breaches a Principle.

RULE 1: Jurisdiction

- 1.1 These DR&P come into effect on the effective date above and replace any other disciplinary rules and procedures previously issued by the CLSB. These DR&P govern Complaints made on or after the effective date.
- 1.2 These DR&P apply where the following three criteria are met:
 - (i) there is reason to suspect that a Costs Lawyer has been or is in breach of a Principle;
 - (ii) the Costs Lawyer held a practising certificate issued by the CLSB at the time the alleged breach of a Principle occurred; and
 - (iii) the Costs Lawyer holds a practising certificate issued by the CLSB at the time the Complaint is made to the CLSB.
- 1.3 Where the Complainant is not the CLSB, for these DR&P to apply a Complaint must be made in writing to the CLSB:
 - (i) within one calendar year from the date on which the matters giving rise to the Complaint occurred; or
 - (ii) within one calendar year from the date on which the Complainant first became aware that a breach of a Principle may have occurred.
- 1.4 In the event that a Complaint is made outside of the time limits in rule 1.3 above, then the CLSB may only consider the Complaint if:
 - (i) the Complainant provides a reasonable explanation for the delay in making the Complaint and that delay does not cause unfair prejudice to the Costs Lawyer involved; or
 - (ii) if it is otherwise in the public interest to consider the Complaint.
- 1.5 The CLSB will not consider a Complaint by a litigant in person or a solicitor on the other side of proceedings involving the Costs Lawyer, whilst those proceedings are ongoing. The court has powers to consider conduct issues in the context of ongoing proceedings.

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- 1.6 In the event the CLSB accepts jurisdiction to investigate an alleged breach of a Principle then the CLSB will confine itself to that alleged breach and to documents and witness evidence which relate to that breach. If in the course of an investigation the CLSB obtains information relating to another potential breach of a Principle, the CLSB will treat that information as a fresh Complaint.
 - 1.7 The CLSB has entered into agreements with other regulatory bodies to govern situations in which more than one regulatory body might have jurisdiction to handle a Complaint. The CLSB will only exercise its jurisdiction under these DR&P in accordance with such agreements. The CLSB will notify a Complainant if a Complaint falls within this rule 1.7.

RULE 2: The Legal Ombudsman (service complaints)

- 2.1 A Complaint about service provided by a Costs Lawyer falls within the jurisdiction of the Legal Ombudsman. A Complaint about the conduct of a Costs Lawyer (i.e. breach of a Principle) falls within the jurisdiction of the CLSB.
- 2.2 In the event the CLSB receives a Complaint that falls within the jurisdiction of the Legal Ombudsman and not the jurisdiction of the CLSB, the CLSB will inform the Complainant of this and provide the Complainant with contact information for the Legal Ombudsman.
- 2.3 In the event a Complaint relates to both the service and conduct of a Costs Lawyer the CLSB will allow the Legal Ombudsman to conclude the service element of that Complaint before the CLSB considers the conduct element of that Complaint, unless the CLSB deems the conduct element so serious in nature that it requires the immediate attention of the CLSB. For the purposes of rule 1.3, the CLSB will treat the date of notification to the CLSB as being the date the Complaint was made to either the CLSB or Legal Ombudsman.

RULE 3: Publication of an outcome against a Costs Lawyer

- 3.1 The purposes of publishing a disciplinary outcome are to protect the public and to promote high standards across the Costs Lawyer profession. The CLSB will be guided by these purposes in determining whether and how to publish.
- 3.2 In the event a breach of a Principle has been established under these DR&P, the finding and any associated disciplinary outcome may be published by the CLSB unless publication would prejudice other proceedings or investigations (whether of a legal or regulatory nature) or would involve a significant risk of a breach of Article 8 of the Human Rights Act 1998.
- 3.3 Publication may be on the CLSB website and in any other location that the CLSB deems appropriate for achieving the purposes in rule 3.1. A note will also appear against the name of the Costs Lawyer on the register of authorised and regulated Costs Lawyers.

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- 3.4 Imposition of an interim suspension order under rule 4 will be noted against the name of the Costs Lawyer on the register of authorised and regulated Costs Lawyers for the period that the interim suspension order is in force.
 - 3.5 Other than where an interim suspension order has been imposed, publication will only occur where a breach of a Principle has been established against a Costs Lawyer and following expiry of the time for an appeal under these DR&P. In the event the Costs Lawyer appeals, publication of the finding under appeal will be withheld pending the outcome of that appeal.
 - 3.6 Publication will be in accordance with the Data Protection Act 2018, as amended from time to time. The CLSB may rely upon any exemptions from general data protection rules relating to the processing of personal data in connection with regulatory activities.

RULE 4: Interim suspension order

- 4.1 On receipt of a Complaint, the CLSB shall consider whether or not the Costs Lawyer’s practising certificate should be subject to an interim suspension order. The effect of an interim suspension order is to impose a condition on the Costs Lawyer’s practising certificate that the Costs Lawyer does not have the right to practice as a Costs Lawyer pursuant to the CLSB’s Practising Rules while the interim suspension order has effect.
- 4.2 An interim suspension order must be fair, just and reasonable in all the circumstances and may only be imposed if the CLSB is satisfied that such a course of action is justified having regard to:
 - (i) the risk posed to the public if such an interim suspension order was not implemented; and
 - (ii) the Regulatory Objectives.
- 4.3 If the CLSB is of the view that there are grounds for imposing an interim suspension order, the CLSB will appoint a Lay Person Panel Member to consider the relevant facts and make a recommendation as to whether an interim suspension order should be imposed. The Lay Person Panel Member will consider whether it is appropriate, in all the circumstances, to seek further information from the Costs Lawyer before making the recommendation.
- 4.4 An interim suspension order will:
 - (i) be imposed by the CLSB only where recommended by the Lay Person Panel Member appointed under rule 4.3;
 - (ii) be notified in writing to the Costs Lawyer, including reasons why the criteria in rule 4.2 for imposition of an interim suspension order are considered to be met; and
 - (iii) be published in accordance with rule 3.

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- 4.5 An interim suspension order shall remain in force until such time as:
- (i) an investigation has been undertaken in accordance with rule 5 and a finding has been made as provided for in rule 5.2, in which case the interim suspension order shall automatically lapse;
 - (ii) the relevant Complaint is fully determined following a finding at level one, level two or level three and the time for any appeal has expired, in which case the CLSB will revoke the interim suspension order and notify the Costs Lawyer in writing; or
 - (iii) the CLSB has reasonable grounds to believe that the criteria in rule 4.2 for imposition of an interim suspension order are no longer met, in which case the CLSB will revoke the interim suspension order and notify the Costs Lawyer in writing.
- 4.6 The Costs Lawyer may apply in writing to have an interim suspension order revoked at any time while such an order is in force. The Lay Person Panel Member appointed under rule 4.3 will determine the application within 14 calendar days of receipt, taking into account new evidence or information provided. The CLSB will notify the Costs Lawyer in writing of the Lay Person Panel Member's determination. If the Lay Person Panel Member determines that the application should be allowed, the CLSB will revoke the interim suspension order.
- 4.7 The Costs Lawyer may, within 14 calendar days of receiving written notification of a determination under rule 4.6, appeal against that determination. The appeal will be considered by a Conduct Appeal Committee appointed under rule 7.2. The Lay Person Panel Member appointed under rule 4.3 shall not be a member of that Conduct Appeal Committee.
- 4.8 An appeal under rule 4.7 must be made in writing, setting out the reasons why the Costs Lawyer believes the interim suspension order should be revoked. The Conduct Appeal Committee will consider the issue afresh. The CLSB will notify the Costs Lawyer in writing of the outcome of the appeal. If the appeal is allowed, the CLSB will revoke the interim suspension order.
- 4.9 There will be no order for costs against the Costs Lawyer in the event an interim suspension order is issued by the CLSB, including in relation to any appeal, except as otherwise provided in these DR&P.

RULE 5: Level one procedure

5.1 Investigation

- 5.1.1 In the event the CLSB accepts jurisdiction in respect of a Complaint, it will carry out an investigation in relation to the Complaint. The investigation will be conducted by a senior member of CLSB staff or by an external investigator appointed by the CLSB who is considered to have the requisite expertise. The CLSB will use all reasonable endeavours to ensure an investigation is completed within three calendar months from the date an investigator is instructed or, in the event a CLSB staff member conducts the investigation, from the date the CLSB accepts jurisdiction.

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- 5.1.2 The person carrying out the investigation will at all times:
- (i) act independently;
 - (ii) maintain confidentiality; and
 - (iii) subject to (i) and (ii) above, make all enquiries and gather all evidence required to enable them to draw accurate conclusions.
- 5.1.3 The CLSB or investigator will send a copy of the Complaint and any documents to the Costs Lawyer inviting them to provide, within 28 calendar days, a response which sets out concise observations (which may include admissions), supported by evidence relevant to the investigation. The Costs Lawyer may make a written request to the CLSB or investigator for an extension of time for responding, setting out reasons why the extension is required. Only one extension will be permitted other than where the CLSB is satisfied that there are exceptional circumstances.
- 5.1.4 The CLSB may consider multiple Complaints, or multiple potential breaches of a Principle, as part of a single investigation so long as this is consistent with rule 5.1.2.
- 5.1.5 In making a finding and recommending an outcome, the CLSB or the investigator will consider, without limitation:
- (i) whether the alleged facts are disputed by the Costs Lawyer;
 - (ii) whether the alleged conduct is isolated or systemic in nature;
 - (iii) the extent of any prejudice or loss caused or likely to be caused because of the alleged conduct;
 - (iv) whether the alleged conduct involved the integrity or honesty of the Costs Lawyer;
 - (v) the Costs Lawyer's standard of care and conduct leading up to the alleged conduct;
 - (vi) whether the Costs Lawyer's handling of the matter under their first-tier complaints handling procedure was reasonable, and what steps, if any, the Costs Lawyer had taken to address the issue;
 - (vii) whether any material harm has been caused to the standing of the Costs Lawyer profession;
 - (viii) the disciplinary record of the Costs Lawyer;
 - (ix) whether it is a case which involves a matter of wider public interest;
 - (x) whether the Costs Lawyer complied with Principle 5 throughout the investigation.
- 5.1.6 All evidence that is relevant will be admissible in the investigation, unless disclosing it to the CLSB or the investigator would be unlawful. The weight given to any particular evidence or category of evidence will depend on what is fair and reasonable in the circumstances.
- 5.1.7 At the conclusion of an investigation, the CLSB or the investigator will produce a written report. It will set out the evidence considered as part of the investigation and the conclusions drawn from the evidence. Conclusions will be reached on the balance of probabilities.
- 5.1.8 The investigation report will contain one of the following findings:
- (i) no breach of a Principle occurred; or

(ii) a breach of a Principle occurred.

In the event of a finding that a breach of a Principle occurred, the investigation report will also recommend that the CLSB implements one of the outcomes set out in rule 5.3.1.

5.1.9 If the investigation report was prepared by an investigator appointed by the CLSB, it will be evaluated by the CLSB to ensure it is thorough and fair. It will be at the discretion of the CLSB as to whether further investigation is carried out before the finding in the investigation report is acted upon. In such event, the Costs Lawyer will be notified that further investigation will be undertaken and completed within a period of 21 calendar days.

5.2 Investigation finding: No breach of a Principle occurred

5.2.1 If the investigation report includes a finding that no breach of a Principle occurred then:

- (i) no further disciplinary action will be taken by the CLSB in relation to the Complaint; and
- (ii) there will be no costs payable by either the Costs Lawyer or the CLSB to the other.

5.2.2 The CLSB will inform the Costs Lawyer and Complainant of the finding in writing as soon as reasonably practicable.

5.3 Investigation finding: Breach of a Principle occurred

5.3.1 If the investigation report includes a finding that a breach of a Principle occurred, the CLSB may implement any of the following outcomes:

- (i) issue a warning letter, specifying conduct that the Costs Lawyer is expected to engage in or avoid in the future;
- (ii) agree a written undertaking with the Costs Lawyer, specifying actions that the Costs Lawyer has agreed to take or conduct that the Costs Lawyer has agreed to avoid in the future;
- (iii) refer the matter to a Conduct Committee (level two procedure) in accordance with rule 6.

5.3.2 The CLSB will inform the Costs Lawyer and Complainant of the finding and associated outcome in writing as soon as reasonably practicable.

5.3.3 The CLSB will pursue whichever of the outcomes under rule 5.3.1 best promotes, in the CLSB's view, the objectives of these DR&P. In doing so, the CLSB will take into account any recommendations in the investigation report, but will not be bound by those recommendations.

5.3.4 The CLSB will always consider referring the matter to a Conduct Committee where, without limitation:

- (i) the alleged breaches are, or have the potential to be, very serious or sensitive;
- (ii) the conclusions of the investigation are finely balanced or the facts are unclear;
- (iii) the person carrying out the investigation feels they have not been able to obtain all relevant evidence within the parameters set out in rule 5.1.2;

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- (iv) the CLSB is of the view that issuing a warning letter or agreeing a written undertaking would not serve the objectives of these DR&P;
 - (v) the matter otherwise raises an issue of significant public interest.

- 5.3.5 Where the CLSB determines that a written undertaking is the most appropriate outcome, it will seek to agree that written undertaking with the Costs Lawyer promptly following conclusion of the investigation. Once the terms of the undertaking have been agreed, the CLSB will provide the proposed written undertaking to the Costs Lawyer for the Costs Lawyer to sign and return within 14 calendar days. A written undertaking will have effect from the date of the Costs Lawyer's signature.
- 5.3.6 A warning letter or written undertaking will set out in brief the finding of the investigation, including the Principle breached and the circumstances of the breach.
- 5.3.7 A fixed costs order in the sum of £500, payable within 21 calendar days, will be included in any warning letter or written undertaking. A written undertaking may also include an undertaking to pay a financial penalty not exceeding £500.
- 5.3.8 Where an investigation relates to more than one Complaint, or finds that more than one breach of a Principle occurred, the CLSB may implement any combination of the outcomes under rule 5.3.1 as are considered appropriate.
- 5.3.9 In the event the Costs Lawyer:
- (i) expresses to the CLSB that they do not intend to comply with the terms of a warning letter;
 - (ii) does not comply with the terms of a warning letter;
 - (iii) does not sign and return a proposed written undertaking within 14 calendar days of receipt; or
 - (iv) does not comply with the terms of an agreed written undertaking,
- the CLSB may refer the matter to a Conduct Committee (level two procedure) and will notify the Costs Lawyer of this in writing. The Conduct Committee may consider the original Complaint that gave rise to the warning letter or written undertaking, as well as the Costs Lawyer's conduct that led to the matter being referred to the Conduct Committee under this rule 5.3.9 in making its findings.
- 5.3.10 The CLSB will not issue any further Costs Lawyer practising certificates to a Costs Lawyer until such time as fixed costs and any financial penalty at level one have been paid in full by the Costs Lawyer to the CLSB.

5.4 Breach of a Principle occurred: Right of appeal

- 5.4.1 A finding at level one may not be appealed by a Complainant.

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- 5.4.2 The Costs Lawyer may appeal against a finding, following a level one investigation, that a breach of a Principle occurred. The Costs Lawyer may also appeal against the content of a warning letter issued under rule 5.3.1(i).
- 5.4.3 An appeal by the Costs Lawyer under rule 5.4.2 must be made to the CLSB in writing, within 14 calendar days of:
- (i) receipt of written notification of a finding against the Costs Lawyer following a level one investigation; or
 - (ii) receipt of a warning letter (where the appeal relates to the content of that warning letter).
- 5.4.4 The appeal should identify one or more of the following grounds for appeal and attach any evidence in support of those grounds:
- (i) there was a material error of law;
 - (ii) there was a failure to take into account material information;
 - (iii) the decision was irrational or based on irrelevant considerations;
 - (iv) there was a material failure to comply with these DR&P;
 - (v) the decision is unlawful, for example because it infringes a person's human rights;
 - (vi) new evidence has been obtained which could not have been made available when the decision was made.
- 5.4.5 An appeal under rule 5.4.2, which meets the criteria in rules 5.4.3 and 5.4.4, will be determined by a Conduct Committee convened in accordance with rule 6.

RULE 6: Level two procedure (Conduct Committee)

6.1 Jurisdiction of a Conduct Committee

6.1.1 A Conduct Committee will have jurisdiction under these DR&P in the events outlined in rule 5.3.1(iii), rule 5.3.9 and rule 5.4.5. Where a Conduct Committee has jurisdiction, the CLSB will convene the Conduct Committee in accordance with these DR&P as soon as reasonably practicable.

6.2 Conduct Committee composition

6.2.1 A Conduct Committee will comprise of two Lay Person Panel Members, one of whom will act as Chair of the Conduct Committee, and one Non-Lay Person Panel Member.

6.2.2 Before appointing a Panel Member to a Conduct Committee, the CLSB will confirm that the Panel Member does not have any conflict of interest in relation to the matter.

6.3 Convening a Conduct Committee

6.3.1 The CLSB may appoint a Case Manager to assist in convening the Conduct Committee. The role of the Case Manager is administrative only; they will have no involvement in the substantive deliberations or determination of the Conduct Committee.

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- 6.3.2 The Costs Lawyer and Complainant will be notified of the name and contact details of any Case Manager appointed.
- 6.3.3 The Case Manager will advise the Complainant that a Conduct Committee is to be convened. A Complainant is not a party to disciplinary proceedings, but the Complainant may attend the Conduct Committee hearing as a member of the public.
- 6.3.4 The Case Manager will, not less than 28 calendar days before the Conduct Committee hearing, issue a written Notice of Conduct Committee to the Costs Lawyer. Whilst the Case Manager will use all reasonable endeavours to accommodate the availability of the Costs Lawyer, the Case Manager may set a Conduct Committee hearing date they consider appropriate in the circumstances.
- 6.3.5 The Notice of Conduct Committee will include the following information:
- (i) the Principle alleged to have been breached which the Conduct Committee is being asked to consider;
 - (ii) date, time and location of the Conduct Committee;
 - (iii) the Panel Members who will form the Conduct Committee;
 - (iv) the Costs Lawyer's right to call witness evidence that has not been agreed between the CLSB and the Costs Lawyer; and
 - (v) the Costs Lawyer's right to be accompanied or represented at their own expense.
- 6.3.6 The Notice of Conduct Committee will annex the following:
- (i) a copy of the investigation report;
 - (ii) a copy of the CoC and any associated rules it is alleged have been breached;
 - (iii) a copy of these DR&P; and
 - (iv) any other documentation the Case Manager considers appropriate in the circumstances.
- 6.3.7 The Case Manager will, not less than 21 calendar days before the Conduct Committee hearing, seek to establish what facts are agreed between the CLSB and the Costs Lawyer.
- 6.3.8 The Costs Lawyer and the CLSB will, not less than 14 calendar days before the Conduct Committee hearing, advise the Case Manager if they intend to call witness evidence in relation to facts that have not been agreed between the CLSB and the Costs Lawyer.
- 6.3.9 The Costs Lawyer will, not less than 14 calendar days before the Conduct Committee hearing, advise the Case Manager if they intend to be accompanied/represented.
- 6.3.10 The Costs Lawyer may, not less than 14 calendar days before the Conduct Committee hearing, file a skeleton argument with the Case Manager under which they set out a brief synopsis of the matter before the Conduct Committee outlining both issues that are agreed and issues that are not agreed between the CLSB and the Costs Lawyer. The CLSB may, not less than 7

days before the Conduct Committee hearing, file a reply to the skeleton argument addressing any issues raised in the skeleton argument that are not dealt with in the investigation report.

6.4 Conduct Committee hearing

- 6.4.1 The CLSB will, not less than 14 calendar days before a Conduct Committee hearing, publish a notice on the CLSB website that a Conduct Committee has been convened. This notice will state the name of the Costs Lawyer, date, time and location of the Conduct Committee hearing.
- 6.4.2 The Conduct Committee hearing will be open to observation by the public. No member of the public will be heard and the Conduct Committee may ask any member of the public to leave in the event their conduct is considered unacceptable during the Conduct Committee hearing.
- 6.4.3 The CLSB will be represented at the Conduct Committee hearing by the CLSB CEO and/or other representative.
- 6.4.4 The Conduct Committee will act impartially. Members of the Conduct Committee may ask questions of any witness, the Costs Lawyer and the CLSB's representative.
- 6.4.5 Any witness, whose evidence has not been agreed and who has therefore been called to give oral testimony, may be asked questions by the Costs Lawyer and/or the CLSB's representative at the direction of the Conduct Committee.
- 6.4.6 All evidence which is relevant will be admissible in a Conduct Committee hearing, unless its disclosure would be unlawful.
- 6.4.7 If deemed appropriate in all the circumstances the Conduct Committee may take legal advice from an independent lawyer, adjourning to take such advice if required. The Case Manager may assist the Conduct Committee in sourcing appropriate legal advice.
- 6.4.8 Any finding reached by a Conduct Committee will be on the balance of probabilities and will be by majority.

6.5 Conduct Committee finding

- 6.5.1 Following the Conduct Committee hearing, the Conduct Committee will make an order setting out its finding as to whether or not a breach of a Principle occurred.
- 6.5.2 Where the Conduct Committee finds that a breach of Principle occurred, the Conduct Committee's order may include one or more of the following sanctions:
- (i) a warning, specifying action the Costs Lawyer must take or must avoid in the future, which may include sanctions that apply automatically upon non-compliance with the terms of the warning;
 - (ii) a financial penalty not exceeding £5,000;

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- (iii) an order suspending the Costs Lawyer's practising certificate for a period not exceeding two years and suspending the Costs Lawyer's name from the register of authorised and regulated Costs Lawyers for the same period (and any such order may require the Costs Lawyer to return their current practising certificate to the CLSB until the period of the suspension has passed);
 - (iv) an order for permanent revocation of the Costs Lawyer's practising certificate and removal of the Costs Lawyer's name from the register of authorised and regulated Costs Lawyers (and any such order may require the Costs Lawyer to return their current practising certificate to the CLSB).

6.5.3 Where the Conduct Committee was convened to consider an appeal from a finding at level one (under rule 5.4.5), the Conduct Committee's order shall stand in place of the level one finding and any associated outcomes. Where the appeal related to the content of a warning letter, the Conduct Committee's order must not include the sanctions in rule 6.5.2 (ii), (iii) or (iv).

6.5.4 A fixed costs order in the sum of £1,250, payable within 21 calendar days, will be included in any order made by the Conduct Committee where it finds that a breach of a Principle occurred.

6.5.5 In the event the Conduct Committee orders that a financial penalty must be paid, it shall stipulate a timeframe for payment.

6.5.6 The Case Manager will, within 21 calendar days of the Conduct Committee hearing, notify the Costs Lawyer in writing of the Conduct Committee's order and reasons for its finding. In complex cases, it may take longer for the Conduct Committee to reach a finding and articulate its reasons. In such cases the Case Manager will keep the Costs Lawyer updated on the likely timeframe for communication of the Conduct Committee's order.

6.5.7 The Case Manager will, upon publication of a Conduct Committee's finding, notify the Complainant.

6.5.8 The CLSB will not issue any further practising certificates to the Costs Lawyer until such time as fixed costs and any financial penalty imposed at level two have been paid in full to the CLSB by the Costs Lawyer.

6.6 Right of appeal

6.6.1 There is no right of appeal by the Costs Lawyer where the Conduct Committee hearing was convened to consider an appeal relating to a level one finding or the content of a warning letter. In all other circumstances the Costs Lawyer may, within 14 calendar days of notification of the Conduct Committee's order, file a written appeal with the Case Manager in relation to any aspect of that order, identifying one or more of the following grounds for the appeal and attaching any evidence in support of those grounds:

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- (i) there was a material error of law;
 - (ii) there was a failure to take into account material information;
 - (iii) the decision was irrational or based on irrelevant considerations;
 - (iv) there was a material failure to comply with these DR&P;
 - (v) the decision was unlawful, for example because it infringes a person's human rights;
 - (vi) new evidence has been obtained which could not have been made available prior to the Conduct Committee making its order.

6.6.2 A Case Manager appointed under level two may continue to act on the same basis under an appeal at level three. The Case Manager will notify the Complainant in the event an appeal is filed.

6.6.3 The finding of a Conduct Committee may not be appealed by the Complainant or the CLSB.

6.6.4 Where an appeal is filed, any fixed costs or financial penalty included in the Conduct Committee's order at level two will not become payable until the appeal has been determined, in accordance with rule 7.3.

RULE 7: Level three procedure (Conduct Appeal Committee)

7.1 Conduct Appeal Committee composition

7.1.1 The Conduct Appeal Committee will comprise of two Lay Person Panel Members, one of whom will act as Chair of the Conduct Appeal Committee, and one Non-Lay Person Panel Member.

7.1.2 A Panel Member who was a member of the Conduct Committee that considered the matter being appealed will not be a member of the Conduct Appeal Committee.

7.1.3 Before appointing a Panel Member to a Conduct Appeal Committee, the CLSB will confirm that the Panel Member does not have any conflict of interest in relation to the matter.

7.2 Convening a Conduct Appeal Committee

7.2.1 The Costs Lawyer will be advised of the date that the Conduct Appeal Committee will consider the appeal (the review date).

7.2.2 The Case Manager will provide the CLSB with a copy of the Costs Lawyer's appeal notice and any documents submitted by the Costs Lawyer in support.

7.2.3 The CLSB may, not less than 14 calendar days before the Conduct Appeal Committee review date, file a response to the appeal notice. The Case Manager will provide this to the Costs Lawyer not less than 10 calendar days before the review date.

7.3 Conduct Appeal Committee process

7.3.1 The Conduct Appeal Committee will meet in private and consider the appeal on the papers.

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- 7.3.2 The Conduct Appeal Committee will consider whether, on the balance of probabilities, any valid ground for appeal has been made out by the Costs Lawyer. If it has not, the Conduct Appeal Committee will uphold the Conduct Committee's order. If it has, the Conduct Appeal Committee will review the evidence that was before the Conduct Committee as well as any new evidence and decide whether to uphold or overturn the Conduct Committee's order.
- 7.3.3 Where a ground of appeal has been made out, the Conduct Appeal Committee may uphold or overturn the order of the Conduct Committee in full or in part. The Conduct Appeal Committee may set aside any part of an order made by a Conduct Committee and may substitute its own order, incorporating any of the sanctions set out in rule 6.5.2, except that it may not impose a higher financial penalty than that imposed by the Conduct Committee.
- 7.3.4 The finding of the Conduct Appeal Committee will be by majority.
- 7.3.5 If deemed appropriate in all the circumstances the Conduct Appeal Committee may take legal advice from an independent lawyer, adjourning to take such advice if required. The Case Manager may assist the Conduct Committee in sourcing appropriate legal advice.
- 7.3.6 In the event the Conduct Appeal Committee upholds the Conduct Committee's order in full, the Costs Lawyer will be ordered to pay fixed costs at level three in the sum of £1,250 (in addition to the £1,250 fixed costs ordered by the Conduct Committee at level two and any financial penalty imposed at level two). Level two and level three fixed costs, and any financial penalty imposed at level two, will be payable to the CLSB within 14 calendar days of the Costs Lawyer receiving written notification of the Conduct Appeal Committee's order.
- 7.3.7 In the event the Conduct Appeal Committee overturns the Conduct Committee's order in full, the Costs Lawyer will not be liable for any costs of the Conduct Committee at level two or of the Conduct Appeal Committee at level three.
- 7.3.8 In the event the Conduct Appeal Committee overturns the Conduct Committee's order in part, the Costs Lawyer will be liable to pay fixed costs ordered at level two, and any financial penalty ordered at level two and upheld by the Conduct Appeal Committee, within 14 calendar days of receiving written notification of the Conduct Appeal Committee's order. The Costs Lawyer will not be liable for any fixed costs at level three.
- 7.3.9 The Conduct Appeal Committee may, by order, deal with any interim suspension order that is in force in relation to the Costs Lawyer.

7.4 Following a Conduct Appeal Committee review

- 7.4.1 The Case Manager will, within 21 calendar days of the review date, notify the Costs Lawyer, the Complainant and the CLSB in writing of the Conduct Appeal Committee's order and reasons for its finding. In complex cases, it may take longer for the Conduct Appeal Committee to agree an order and articulate its reasons. In such cases the Case Manager will keep the

parties updated on the likely timeframe for communication of the Conduct Appeal Committee's order.

- 7.4.2 The CLSB will not issue any further practising certificates to the Costs Lawyer until such time as fixed costs and any financial penalty ordered at level two or level three have been paid in full to the CLSB by the Costs Lawyer.

RULE 8: Provision of information

- 8.1 Where these DR&P require or permit the provision of documents, notice or other information, that information may be provided by email unless the receiving party has requested in advance that information be provided by post.

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