

## Consultation response

### Legal Services Board consultation: Guidance for the New Regulatory Objective on Economic Crime

6 February 2025

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#### Introduction

The Costs Lawyer Standards Board (“CLSB”) is the regulator of Costs Lawyers in England and Wales. We exist to serve the public interest by setting and maintaining the standards of professional conduct by which Costs Lawyers must abide. Our mission is to “provide effective, proportionate regulation of Costs Lawyers in a way that promotes consumer choice and understanding, and engenders justified public trust”.

The CLSB is pleased to respond to the LSB’s consultation on Guidance for the New Regulatory Objective on Economic Crime.

The CLSB is broadly supportive of the LSB’s proposed guidance. We believe that the requirements of our Code of Conduct, our Economic Crime guidance note and related resources, and our Disciplinary Framework already meet many aspects of the draft guidance. We further believe that any aspects of the draft guidance which are not explicitly covered by our existing regulatory arrangements could be swiftly incorporated.

We have provided answers to the consultation questions on which we have comments below.

#### Q1: Do you agree that guidance with outcomes is the right approach to take to assist regulators to pursue the new regulatory objective alongside the other objectives in section 1 of the Act?

The CLSB agrees that developing guidance with outcomes for regulators is the right approach. Each regulated community is different, and an outcomes-focussed approach will enable each regulator to develop guidance that is appropriate and sensible for its own regulated community. This approach empowers regulators to design frameworks that meet the existing needs, challenges and opportunities of their own regulated communities, but which are also flexible enough to encompass potential future risks and developments.

Setting harmonised outcomes also enables regulators to develop approaches that are consistent across the sector. This is particularly important for regulated communities that work closely with, or within, other regulated communities, such as Costs Lawyers (who are individually regulated by the CLSB but often work in firms that are regulated by the Solicitors Regulation Authority or another approved regulator).

**Q2: Are the four outcomes we have identified in the guidance the right ones? Are there any others we have missed?**

The CLSB broadly agrees that the four outcomes that the LSB has identified in the guidance are appropriate and sensible. We have highlighted our concerns regarding outcome (3) in our answer to question 9, below.

**Q3: How might the LSB and Regulators better support the sharing of case studies? What other information should be shared to support meeting the new regulatory objective?**

The CLSB would suggest that the LSB uses its convening power as the oversight regulator to develop knowledge repositories to support regulators in meeting the new regulatory objective. Shared knowledge is particularly important as many of the risks posed by economic crime are common to all approved regulators and regulated communities.

The LSB could also use its convening power to facilitate the development of a forum for regulators to meet to share best practice, discuss issues and hear from experts in the field (similarly to the Legal Regulators' EDI Forum and the Legal Regulators' Technology and Innovation Forum that currently exist). The CLSB considers that, as the risks posed by the economic crime are relevant across all legal professions and approved regulators, this presents an excellent opportunity for the LSB and regulators to work collaboratively to ensure that best practice is shared, and risks mitigated, across the sector. Such a forum could also include financial regulators and other organisations who are experts in economic crime, and therefore well-placed to help approved regulators understand emerging risks facing the professions and how best to address them.

**Q5: Do you agree that undertaking a risk assessment will enable regulators to target their approaches for their regulated communities most effectively?**

**Q7: Do you agree with the proposed outcome for regulators to help their regulated communities to understand the risks they may face concerning economic crime, and support them to avoid facilitating economic crime?**

We are addressing questions 5 and 7 together.

The CLSB agrees that undertaking a risk assessment, and understanding the risks that regulated communities face, will enable regulators to target their approaches for their regulated communities effectively and support authorised persons to avoid facilitating economic crime.

Although Costs Lawyers are prohibited from handling client money, there are activities that Costs Lawyers carry out on behalf of their clients that carry risks associated with economic crime. These include conducting the costs aspects of litigation, advising on transactions relating to costs (such as settlement agreements) and making representations to the court on a client's behalf (for example, about the source of funds used to meet a costs award).

The CLSB [risk chart](#) maps the types of work that Costs Lawyers carry out against the risk of economic crime and non-compliance with the sanctions regime, as well as measures that have been taken to mitigate those risks. It is intended to be a useful starting point for Costs Lawyers in assessing any risks presented by their own practice. Our [Guidance Note on Economic Crime](#) sets out Costs Lawyers' obligations regarding the prevention and detection of economic crime, key legislative requirements, and the steps that Costs Lawyers can take to guard against risks in this area. That

Guidance Note also explains Costs Lawyers' existing obligations to act if they have knowledge or reasonable suspicion of economic crime taking place. Those obligations include reporting to the relevant authorities, including the police where appropriate. Costs Lawyers also must comply with any economic crime-related guidance provided by their employer and their employer's regulator.

Our risk chart and related resources are reviewed and updated regularly to take account of new developments in this area.

#### **Q9: Do you agree that the proposed outcome relating to monitoring and enforcement will help regulators detect and prevent economic crime?**

The CLSB agrees that assessing compliance with any standards developed relating to managing the risks of facilitating economic crime is important.

The LSB's proposed guidance states that, to demonstrate compliance with this outcome, regulators should identify: a graduated system of monitoring measures that accounts for varying degrees of concern and severity of non-compliance with the standard; how often they will engage in compliance monitoring given the likelihood and severity of the issue and/or risk materialising; how their compliance approach will encourage authorised persons to adhere to the established standards; and the steps they will take to mitigate repeat occurrences in instances where regulated persons fail to comply.

The CLSB is primarily concerned with taking enforcement action against serious breaches of our rules and standards. Behaviour involving dishonesty, lack of integrity, significant harm to consumers, and behaviour posing a high risk to the public interest, the reputation of the profession or the administration of justice will always be serious.

The CLSB's Disciplinary Outcomes, and our Policy Statement on Enforcement and Sanctions, set out how we will investigate breaches of our rules and standards, and our approach to imposing sanctions on authorised persons where an allegation of a breach is upheld.

The CLSB welcomes the flexibility set out in section 24 (a) and (b) of the draft guidance regarding the frequency and manner in which regulators monitor compliance with the standards they develop. However, the CLSB notes that, whichever approach is taken, there are potential practical challenges to monitoring compliance that apply to all regulated communities.

Where a report of an alleged breach of rules or standards is made to an approved regulator, that is recorded and investigated. However, if a regulator's approach to helping authorised persons identify and prevent risks of economic crime is working effectively, then this should mean that authorised persons do *not* become involved in economic crime and consequently would not need to self-report to their regulator, or be the subject of an investigation regarding an alleged breach of the relevant regulator's rules and standards. However, the absence of reports of authorised persons becoming involved in economic crime does not of itself mean that authorised persons have not been exposed to risk; it may simply mean that a particular risk or vulnerability has not yet been discovered.

On the other hand, the fact that an authorised person has been exposed to economic crime does not necessarily mean that a regulator's standards or approach regarding economic crime is ineffective. An authorised person may follow all guidance, regulations and best practice to the letter, but still be the unlucky and inadvertent target of a clever criminal. Alternatively, there could be instances where an authorised person deliberately becomes involved in economic crime – or wilfully ignores relevant rules and guidance – despite those rules and guidance being effective against economic crime if they

are followed. In the latter situation, the effectiveness of the regulator's investigative and disciplinary procedures will be crucial.

From a regulatory perspective, this means that monitoring compliance could present practical challenges of trying to prove a negative (i.e. that an absence of any investigations or regulatory breaches is evidence that an approach is working), or demonstrating that individual cases are not necessarily indicative of broader regulatory ineffectiveness. It would be helpful if the guidance could reflect the challenges inherent in monitoring compliance in this area, and for the measures used to assess regulatory performance to reflect the myriad circumstances in which authorised persons may be affected by economic crime.

Finally, in multi-disciplinary environments where there may be members of several professions working together, effective cooperation between regulators where one regulated community is exposed to risk that may affect the others is vital for protecting the public and other authorised persons. The CLSB would therefore suggest that the guidance could include regulators having memoranda of understanding in place with other approved regulators (and/or financial regulators as appropriate) regarding information-sharing and cooperating on investigations as a way of demonstrating compliance with this outcome.

**Q12: Do you agree that an outcome around continued monitoring and evaluation will help ensure any measures regulators decide to put in place are effective to address economic crime into the future?**

The CLSB agrees that regulators should regularly review their approaches and economic crime-related resources for their professions, modify these as appropriate, and maintain up-to-date awareness of economic crime issues within their sector. As stated above, the CLSB considers that the LSB could use its convening powers to assist regulators in this regard by establishing a forum where regulators could share knowledge about the evolving nature of economic crime, changing risks and best practice. This, in turn, would contribute to a more harmonised and consistent approach across the sector.

**Q14: Do you agree with our proposed plan for implementation?**

The CLSB agrees with the LSB's proposal to monitor and assess use of the guidance via the LSB Regulatory Performance Assessment Framework.

**Q15: Do you have any comments or concerns about the equality impacts of our proposed guidance?**

The CLSB does not have any evidence relating to the potential impact of the proposed outcomes and guidance on groups with protected characteristics, or other groups within the regulated communities.

**Q18: Do you have any comments on the potential impact of the draft guidance, including the likely costs and anticipated benefits?**

The CLSB welcomes the outcomes-based approach, which gives the regulators the flexibility to develop strategies and resources that are designed for their particular regulated communities. We also welcome the LSB's recognition that new guidance potentially places increased burdens on authorised persons, and we agree that effective identification of risk - and resultant targeted

approaches by regulators - will be key to mitigating any potential burdens on authorised persons. We agree that, overall, the guidance has the potential to reduce risk for consumers and authorised persons alike.

**Q19: Do you have any other comments about the proposed guidance?**

The CLSB considers that the proposed guidance, as drafted, is clear and accessible. Our comments and concerns about particular aspects of the proposed guidance are set out above.

We would be happy to discuss this response in more detail, and we look forward to the publication of the LSB's response to the consultation in due course.