



Consultation response

Legal Services Board consultation on upholding professional ethical duties

29 May 2025

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 upholding professional ethical duties.

Q1. Do you agree with our proposed definition of *professional ethical duties*?

In the consultation paper, the LSB proposes the following definition of professional ethical duties for authorised persons:

- *Act with independence and integrity;*
- *Maintain proper standards of work;*
- *Act in the best interests of their clients;*
- *Comply with their duty to the court to act with independence in the interests of justice; and*
- *Keep the affairs of clients confidential.*

The consultation paper goes on to say that, “*authorised persons must ensure that the duty to act in the best interests of their clients does not override their duty to the court, or their duty to act with independence and integrity where these come into conflict.*”

The CLSB broadly agrees with the proposed definition of professional ethical duties, which are already duties for Costs Lawyers under the CLSB Code of Conduct. The equivalence between the LSB’s proposed definition and the duties set out in the Costs Lawyer Code of Conduct is illustrated in the table below.

LSB proposed definition	CLSB Code of Conduct
<i>Act with independence and integrity</i>	Principle 1 – Act with honesty and integrity and maintain your independence. Principle 1.1 - You must act honestly and with integrity, not only in your professional life but also in your private life where your behaviour might reasonably be considered to undermine your adherence to the core ethical principles of the profession.

	<p>Principle 1.1a - You must act independently in the interests of the proper administration of justice. This duty overrides your duties to your client and applies both to your work before the court, in advising clients, and in conducting litigation.</p>
<p><i>Maintain proper standards of work</i></p>	<p>Principle 4 – Provide a good quality and standard of work to your client.</p> <p>Principle 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>Principle 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>Principle 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><i>Act in the best interests of their clients</i></p>	<p>Principle 3.1 - You must act at all times in the best interests of your client, except where this conflicts with your duty to act independently in the interests of the proper administration of justice or where otherwise permitted by law. You must act in the best interests of your client regardless of the consequences for your professional client or other intermediary. You must not permit a professional client, employer or any other person to limit your ability to fulfil this duty.</p>
<p><i>Comply with their duty to the court to act with independence in the interests of justice</i></p>	<p>Principle 2 - Comply with your duty to the court and promote the proper administration of justice.</p> <p>Principle 2.1 - You must at all times act within the law.</p> <p>Principle 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>Principle 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>Principle 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>Principle 2.5 - You must support the proper administration of justice by promoting the appropriate and cost-effective use of the resources of the court and the parties.</p>
<p><i>Keep the affairs of clients confidential.</i></p>	<p>Principle 7 - You must keep the affairs of your client 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>

We would suggest two amendments to the proposed professional ethical duties, as set out below.

First, we would suggest that ‘honesty’ be added into the first duty, so that it reads “act with honesty, integrity and independence”. Honesty is one of the core values in Principle 1 of the CLSB Code of Conduct, and referred to in the Codes of Conduct of other approved regulators, such as the Bar Standards Board and CILEx.

Second, we note that the proposed definition does not include a professional ethical duty relating to supporting equity, diversity and inclusion. The Costs Lawyer Code of Conduct places a duty on Costs Lawyers to treat everyone fairly, and with dignity and respect (Principle 6). It emphasises that Costs Lawyers must not bully, harass, or unfairly discriminate against anyone, and must not engage in or facilitate counter-inclusive conduct or harassment.

The detailed principles in the CLSB Code of Conduct mirror the protected characteristics in the Equality Act 2010 and incorporate the commitment of legal regulators in their joint statement “Tackling Counter-Inclusive Misconduct Through Disciplinary Processes” (May 2022).

Given that all legal regulators – including the LSB – committed to that joint statement, we would suggest that the definition of professional ethical duties should include a duty relating to upholding the principles of equity, diversity and inclusion.

Q2. Do you agree with our proposal to set general outcomes?

The CLSB agrees that setting general outcomes for regulators is the right approach. We welcome the LSB's recognition that the approved regulators regulate different professions, reserved legal activities and authorised persons (including both individuals and entities), and as a consequence may adopt different approaches to pursuing the stated outcomes (paragraph 9 of the consultation paper). Each regulated community is different, and an outcomes-focussed approach will enable each regulator to develop guidance and resources that are 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.

Q3. Do you agree these proposed outcomes address the harms and unethical behaviours presented in the evidence? Are there any further outcomes we should consider?

The CLSB believes that the proposed outcomes highlight the importance of professional ethical conduct, and its centrality to the proper administration of justice, rule of law and consumer protection. We believe the proposed outcomes will contribute to addressing the harms and unethical behaviours presented in the evidence.

Q4. Do you agree that the proposed general outcomes should be met by regulators through a set of specific expectations?

The CLSB recognises that developing a set of general expectations that would be applicable across legal regulators would have the benefit of harmonising approaches across the sector, bringing consistency for consumers and authorised persons alike.

As explained in our response to question 2, we welcome the LSB's recognition that the approved regulators regulate different professions, reserved legal activities and authorised persons (including both individuals and entities), and as a consequence may adopt different approaches to pursuing the stated outcomes (paragraph 9 of the consultation paper). We also welcome the LSB making clear that regulators will have discretion in how they pursue alternatives to meeting the outcomes, where this is appropriate for their regulated community. This flexibility is essential for ensuring that regulators are able to design guidance, resources, and policies that best meet the existing needs, challenges and opportunities of their own regulated communities.

Q5. Do you agree that regulators should demonstrate that evidence-based decisions have been taken about which expectations are appropriate to implement for those they regulate?

The CLSB agrees that regulators should take an evidence-based approach in this area.

Q6. Do you agree with the proposed outcome 1?

Proposed Outcome 1 is that "authorised persons have the right knowledge and skills on professional ethical duties, both at the point of qualification and throughout their career."

The CLSB agrees with this proposed outcome.

Q7. Do you agree with the specific expectations proposed under outcome 1?

The CLSB agrees with the expectations proposed under outcome 1. These expectations align with much of what the CLSB is already doing to ensure that Costs Lawyers have the right knowledge and skills on professional ethical duties at all stages of their career.

Year 1 of the Costs Lawyer Professional Qualification includes an 8-week module on Professional Standards & Ethics, which is assessed through an assignment and seminar. This is a compulsory module that is delivered by the CLSB, and includes Costs Lawyers' obligations under the Code of Conduct, how the CLSB monitors and ensure compliance, and how the CLSB handles breaches of the Code. Resources from the CLSB Ethics Hub are used for break-out discussion groups as part of the training module.

'Professional standards and ethics' is a key area of the 'Knowledge' component of the CLSB [Competency Framework](#); Costs Lawyers are expected to have a 'detailed knowledge and understanding' in this area, as well as depth and breadth of knowledge of the key concepts and general principles. The Competency Framework explains that this is "necessary to preserve the reputation of the profession, retain an individual's regulated status and protect the interests of clients and the wider public." Failing to recognise – or ignoring – ethical behaviour is specified as a negative behavioural indicator against the competencies of 'self management' and 'agile thinking'.

Professional ethical duties are also integral to the CLSB's [Ongoing Competency Statement](#) for Costs Lawyers, with expectations around honesty, fairness, trust, integrity and ethical conduct woven throughout. For example, "act as a role model in upholding professional integrity and standards" is a positive behavioural indicator for Costs Lawyers aspiring to business leadership. Conversely, willingness to "overlook non-compliance or unethical conduct in pursuit of business objectives" is listed as a negative indicator against this skill. Similarly, "Maintains ethical standards and upholds professional integrity in all client interactions" is a positive behavioural indicator for the 'Customer service and client relationships' skill,

Finally, as set out in our answer to question 9, the CLSB has developed a wide range of resources on professional and ethical duties that can be used by Costs Lawyers at all stages of their career.

Q8. Do you agree with the proposed outcome 2?

Proposed Outcome 2 is that "regulators have a framework of rules, regulations, guidance and other resources which make clear that *professional ethical duties* are integral to the way authorised persons are expected to behave and act throughout their careers."

The CLSB agrees with this proposed outcome. It is vital to the administration of justice, rule of law, and consumer protection, that all authorised persons are clear about their professional and ethical obligations, and how to apply these throughout their career.

Q9. Do you agree with the specific expectations proposed under outcome 2?

The CLSB agrees with the specific expectations proposed under outcome 2. These expectations align with the resources that the CLSB has already developed to help Costs Lawyers understand their professional and ethical duties at all stages of their career.

The CLSB has developed a wide range of guidance and support on professional ethical duties to support Costs Lawyers. The resources in the CLSB [Ethics Hub](#) are intended to help Costs Lawyers consider appropriate steps to take when faced with a situation that raises ethical concerns, and to encourage ongoing engagement with - and reflection on - what it means to uphold professional standards.

The resources include detailed information on topics such as ‘Costs Lawyers and the Rule of Law’, ‘Learnings from the Post Office Horizon Scandal’, ‘Balancing the interests of your professional client and ultimate client’, ‘Whistleblowing’ and more. They also include ethical scenarios that are fictional, but based on real enquiries and complaints received by the CLSB. These scenarios are not intended to provide concrete answers to ethical questions, but aim to guide Costs Lawyers and help them consider relevant factors.

The resources emphasise that, regardless of the situation a Costs Lawyer may be facing, they should always consider their obligations under the Costs Lawyer Code of Conduct, and ensure that they are familiar with the CLSB’s Guidance Notes in the [Costs Lawyer Handbook](#). Costs Lawyers can also contact the CLSB directly for assistance.

Q10. Do you agree with the proposed outcome 3?

Proposed Outcome 3 is that “authorised persons are supported and empowered to uphold their professional ethical duties when they are challenged.”

The CLSB agrees with this outcome in principle.

Costs Lawyers have obligations under the [Code of Conduct](#) to act in the best interests of their client and Costs Lawyers will usually have a contractual duty to act in the best interests of their employer. They also have wider obligations to act with honesty and integrity, and to promote the proper administration of justice and the rule of law. They also must keep the public interest, and public perception of the profession, in mind at all times. That said, there may be times when upholding those duties in the face of challenge may feel daunting, and it is important that authorised persons are supported in such cases, especially as raising concerns an early stage may prevent further harm being caused.

Q11. Do you agree with the specific expectations proposed under outcome 3?

Paragraph 69 (i) of the consultation paper states that regulators would be expected to: “Set clear reporting expectations for authorised persons, their managers and employees within authorised firms on any breach or anticipated risk of breach of *professional ethical duties*, to facilitate an environment of openness and speaking up.”

The CLSB provides detailed guidance for authorised persons on their reporting obligations. We have a specific note in the Ethics Hub on whistleblowing for Costs Lawyers who may find themselves in a situation where they may need to blow the whistle.

Where a Costs Lawyer reports a disclosable event to the CLSB, we will – where appropriate - also report to other regulators and authorities, which could include the police where a report includes evidence of a crime.

The consultation paper does not explain whether the expectations for regulators are intended to go beyond regulators’ existing duties and policies in this regard if they are notified of a breach

or anticipated breach of a professional ethical duty by an authorised person. It would be helpful if this could be clarified.

Q12. Do you agree with the proposed outcome 4?

Proposed Outcome 4 is that “regulators identify and use appropriate tools and processes to monitor and supervise the conduct of authorised persons, and where necessary take effective action to address non-compliance with *professional ethical duties*.”

The CLSB agrees in principle with this outcome.

Ethical conduct is an important part of upholding the rule of law and the proper administration of justice. By upholding the rule of law and acting ethically, Costs Lawyers help to ensure access to justice, the protection of human rights, the equal application of the law to all, and public trust in the legal system. Conversely, unethical conduct undermines the rule of law and access to justice, and diminishes public trust in the profession as a whole.

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. Costs Lawyers whose conduct falls below the expected standard may find themselves subject to a complaint or disciplinary sanctions by the CLSB under our existing policies and procedures. As set out in our [Policy Statement on Enforcement and Sanctions](#), the CLSB is primarily concerned with taking enforcement action against serious breaches. Behaviour involving dishonesty, lack of integrity, significant harm to consumers, or behaviour that poses a high risk to the public interest, the reputation of the profession or the administration of justice, will always be serious. Our guidance on [Reporting Ethical Issues](#) provides information about reporting in different circumstances, including what to report, when to report and how to decide whether to make a report.

We are therefore somewhat surprised that the consultation paper states, “The regulators’ responses to our information request show that currently there is no specific focus through monitoring, compliance or enforcement on professional ethics.”

Q13. Do you agree with the specific expectations proposed under outcome 4?

The CLSB agrees that addressing gaps in compliance with ethical duties is important. However, there are potential practical challenges to monitoring compliance in this area 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 comply with their ethical duties is working effectively, then this should mean that authorised persons are able to resolve ethical problems appropriately, 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 professional ethical duties. Conversely, the absence of reports of authorised persons breaching professional ethical duties does not of itself mean that authorised persons have not encountered ethical problems or not complied with their duties; it may simply mean that an ethical issue has not been recognised or reported.

On the other hand, the fact that an authorised person is involved in a breach of ethical duties does not necessarily mean that a regulator's standards or activities are ineffective. The very nature of ethical dilemmas is that they arise when the best course of action is not clear-cut. For example, when the ethical course of action may have a negative outcome, or when the needs of different parties are in conflict. Ethical dilemmas may pose questions of conflict between an authorised person's duty to promote the proper administration of justice and the requirement to protect the interests of their client. In practice, every ethical challenge will have unique characteristics, and an authorised person must decide how to meet their professional obligations on a case-by-case basis. This means that they must exercise professional and situational judgement, and give consideration to any ethical issues at hand, when considering how to act.

What is considered ethical conduct and values are shaped by societal and cultural expectations that are constantly evolving. There is sometimes no 'right' answer to complex ethical questions that occur in professional and legal contexts, which are themselves complicated and nuanced. Each scenario will be different, and the ethical challenges that arise in one area of law may not occur in another. For example, an ethical question that arises in a costs context may be very different to that which arises in substantive family law litigation. In such situations, the effectiveness of a regulator's reporting and disciplinary processes are key.

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 ethical 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 an area where subjective, individual judgement means that any number of approaches could be deemed appropriate when addressing a particular challenge.

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. This could be achieved through the Framework Memorandum of Understanding that is in place between the approved regulators regarding information sharing and investigations.

Q14. Do you agree with the proposed outcome 5?

Proposed Outcome 5 is that "regulators regularly evaluate the impact of their measures to pursue outcomes 1 to 4 above to and make changes, if required, to ensure that they remain fit for purpose."

The CLSB agrees with this proposed outcome.

Q15. Do you agree with the specific expectations proposed under outcome 5?

We agree that regulators should regularly review their guidance, resources and reporting procedures regarding professional ethical duties, subject to the concerns that we have set out in answer to question 13 above.

Q16. Do you agree with our proposed timelines for implementation?

The CLSB agrees with the proposed timelines for implementing outcomes 1 to 3. 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.

The CLSB agrees with the proposed timelines for implementing outcomes 4 to 5, subject to the concerns we have set out in question 13 above.

Q17. Is there any reason why a regulator would not be able to meet the statement of policy outcomes within the timeframes proposed? Please explain your reasons.

Please see our response to question 16.

Q18. Have you identified any equality impacts, we haven't considered which, in your view, may arise from our proposed statement of policy?

The CLSB has not identified any other equality impacts arising from the proposed statement of policy.

Q19. Do you have any evidence relating to the potential impact of our proposals on specific groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

The CLSB does not have any evidence of potential impact of the proposals on specific groups with protected characteristics.

Q20. Are there any other wider equality issues or impacts that we should take into account and/or any further interventions we should take to address these in our statement of policy?

The CLSB has not identified any wider equality issues or impacts that should be taken into consideration.

Q21. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

Ethical conduct is an important part of upholding the rule of law and the proper administration of justice. By upholding the rule of law and acting ethically, authorised persons help to ensure access to justice, the protection of human rights, the equal application of the law to all, and public trust in the legal system. Conversely, unethical conduct undermines the rule of law and access to justice, and diminishes public trust in the profession as a whole.

In addition to its vital relationship to the rule of law, ethical conduct also has positive benefits for the profession, firms and individual authorised persons. Being perceived as a professional or firm with high ethical standards and values can help to attract new business and retain existing clients, and have positive benefits for recruitment into the profession. For example, a recent [study](#) showed that a firm's perceived ethics and values have an impact on recruitment, with three quarters of study respondents agreeing that they would not join an organisation whose values did not match their own, even if they were offered more money.

Q22. Do you have any further comments?

The CLSB notes that, as drafted, the expectations say, “regulators **must**”. The use of ‘must’ in this context gives the impression that the expectations are, in fact, requirements. The use of ‘must’ in this context is also inconsistent with previous LSB policy statements, which have used phrasing such as “regulators should” (LSB policy statement on [first tier complaints](#), May 2024) or “regulators are expected to” (LSB policy statement on [empowering consumers](#), April 2022). We would therefore expect to see the language around the expectations softened in the final version of the policy statement, and the use of the word “must” amended.