

CLSB Risk Register

Last reviewed: 28 June 2023

This risk register was developed in March 2023 following a review of the CLSB’s risk framework. It maps the potential risks that could impact the CLSB’s effectiveness, either directly or indirectly, through their influence on the market that we regulate. Previous versions of our operational and regulatory risk registers are available by [contacting us](#).

This risk register is divided into four sections:

A. Sources of risk for horizon scanning (market risks)	2
B. Risk areas for ongoing monitoring	3
C. Key risk areas for mitigation	6
D. Risk areas for longer-term structural reform	8

A. Sources of risk for horizon scanning (market risks)

These sources have the potential to generate new risks or exacerbate existing ones, and are therefore key targets for horizon scanning. They relate to what is happening in the costs law market, in areas such as:

- client demand and need;
- the supply of services by Costs Lawyers and other market participants;
- the overall legislative and regulatory environment affecting the market; and
- the impact of activity in other parts of the legal sector, including actions of other regulators.

Category of risk	Main sources of risk
Political/legal/regulatory	Changes in public sector spending, court rules or legislation driving costs control/capping.
Political/legal/regulatory	New regulation of ancillary industries, such as third party litigation funding.
Political/legal/regulatory	Changes in the Civil Procedure Rules or common law more broadly.
Economic	Trends in the litigation market and commercial developments in litigation funding options.
Economic	New entrants to the market and new service offerings.
Social	Consumer use of online legal services, including the emergence of costs risk.
Social	Demand for different pathways to legal professional qualification.
Technological	Progress in court digitisation and e-billing.
Technological	Law firm take up of technology, including case management and billing systems.
Technological	Adoption of blockchain technology and smart contracts.

B. Risk areas for ongoing monitoring

These are specific risks, identified from horizon scanning across the risk sources described in section A above, that could foreseeably impact the regulatory objectives in section 1 of the Legal Services Act 2007. These risks are subject to ongoing monitoring to determine whether their impact can and should be actively managed by the CLSB (see section C below).

Even though many of these risks are outside of our control, their impact can be mitigated generally by fostering:

- Robustness – building strength and depth in the profession by increasing numbers, improving the quality of both initial and ongoing training and widening the range of expertise and skills the profession is able to offer.
- Resilience – improving the ability of Costs Lawyers to redeploy their skills within a changing market.

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
Protecting and promoting the public interest	<ul style="list-style-type: none"> – Capping of recoverable costs – Reduction in the size of the NHS litigation budget – Wasting of court time by unqualified costs draftsmen, authorised practitioners lacking in costs competency, or poor practices of Costs Lawyers 	<ul style="list-style-type: none"> – Risks from unqualified suppliers – Risks from ineffective regulation – Risks from public sector budget cuts targeting litigation, or other forms of intervention in the costs market, in ways that prioritise short term budgetary savings over longer term public interest
Supporting the constitutional principle of the rule of law	<ul style="list-style-type: none"> – Shrinking legal aid budget and falling solicitor numbers providing legal aid services – Court promotion of technology and mediation to overcome backlog – Civil procedure review designed to improve the functioning of the courts and introduction of e-billing as standard 	<ul style="list-style-type: none"> – Risks from policy, legislative or rule changes that impact on demand for Costs Lawyer services or viability of providing services to those with legal need
Improving access to justice	<ul style="list-style-type: none"> – Individuals or groups excluded from access to justice by excessive costs or costs uncertainty – Expansion of fixed costs regime, reforms to PI regime, reforms to judicial review 	<ul style="list-style-type: none"> – Risks from inadequate supply of costs information services – Risks from policy reforms designed to reduce availability of contested litigation

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
	<ul style="list-style-type: none"> – Solicitors unable to claim full legitimate costs from legal aid budget without Costs Lawyers – Third party funders discouraged by inadequate budgeting and uncertainty of rules around contingency arrangements 	<ul style="list-style-type: none"> – Risks from insufficient numbers of legal aid trained Costs Lawyers – Risks from inadequate service from Costs Lawyers or unqualified costs draftsmen
Protecting and promoting the interests of consumers	<ul style="list-style-type: none"> – Consumers unable to access independent advice on costs – Consumers are excluded from civil litigation or are inadequately served due to limitations on funding options (including fixed fees on specialist legal services) – Self-represented litigants incur significant adverse costs risk/liability due to lack of individualised advice – Consumer risk from unregulated no win no fee advisors 	<ul style="list-style-type: none"> – Risks from insufficient supply of Costs Lawyers focused on consumer market – Risks from “capture” of Costs Lawyer services by professional (mainly solicitor) clients – Risks from public sector budget cuts targeting litigation or policy interventions designed to stem legal costs – Risks from gaps in regulation
Promoting competition in the provision of legal services by authorised persons	<ul style="list-style-type: none"> – Law firm mergers hampered by lack of accurate information about WIP; investors discouraged by lack of clarity around value of law firms – New entrants to the legal sector cannot access independent information about value of certain areas of litigation activity – Increased use of technology in law firms substituting for Costs Lawyers – Concerns about market risks disincentivise new qualifiers or encourage qualified Costs Lawyers out of the profession 	<ul style="list-style-type: none"> – Risks from insufficient supply of properly trained Costs Lawyers to provide essential services – Risks from new service areas with potential risks to clients and firms – Risks from the activities of other regulators – Risks from lack of awareness/ability of Costs Lawyers to embrace and adapt to technology

Regulatory objective	Costs law market related risk outcome	Relationship to risk sources
	<ul style="list-style-type: none"> – Costs firms offering new unregulated services alongside reserved legal activities, such as litigation funding options for clients – SRA regulation fails to prevent employer collapse creating problems in the Costs Lawyer market 	
Encouraging an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> – Insufficient numbers of Costs Lawyers are available to the market generally – Insufficient supply of independent costs law firms and practitioners in the market – Costs Lawyers’ independence is undermined by an actual or perceived conflict between the interests of their immediate (professional) client and their underlying client – Costs Lawyers are not appropriately trained and up-to-date – Costs Lawyer demographics do not reflect society 	<ul style="list-style-type: none"> – Risks from insufficient supply of properly trained Costs Lawyers – Risks from Costs Lawyers being absorbed into solicitors firms/SRA regulation – Risks from “capture” of Costs Lawyer services by professional clients – Risks from ineffective CLSB regulatory arrangements – Risks from limited diversity of new entrants to the profession
Promoting and maintaining adherence to the professional principles	<ul style="list-style-type: none"> – Disciplinary issues/complaints about Costs Lawyers leading to poor consumer outcomes – Failure of Costs Lawyers to maintain proper standards of work – Costs law firms unwilling or unable to implement sufficient systems and controls 	<ul style="list-style-type: none"> – Risks from ineffective CLSB regulatory arrangements – Risks from lack of entity-level regulation in the costs market

C. Key risk areas for mitigation

These consolidate the key risks identified in section B over which we have some degree of influence or control through our regulatory levers, and which we can therefore work to mitigate over time. The need to proactively manage these risks influences our regulatory activities, including our approach to supervision and the priorities in our annual Business Plans. The table below sets out the priority workstreams that are aimed at mitigating or managing these risks in the current year.

	Regulatory risks	Current priority initiatives for mitigating risks
1.	Poor client outcomes arise from substandard conduct, inadequate service or lack of competence amongst Costs Lawyers.	<ul style="list-style-type: none"> 2023 Business Plan priority 10: <i>Develop a programme of work to align the CLSB’s approach to ensuring continued competency with the Legal Services Board’s policy statement on ongoing competence.</i> 2023 Business Plan priority 12: <i>Deliver the next phase of our digital workplan, including by: improving the visibility of supervision issues in the database; creating a single repository for complaints data; adding action prompts to functionality; capturing regulatory history of individual Costs Lawyers in the database.</i> Implement changes to the Disciplinary Rules and Procedures as well as first tier complaint procedures aimed at encouraging streamlined resolution of both service and conduct issues for clients (April 2023). Update and augment supporting materials for CPD and complaints procedures, and publish “lessons learned” for the profession, following supervisory audits (May 2023).
2.	Costs Lawyers offer new areas of service without adequate consumer protections or assessment of risk to consumers.	<ul style="list-style-type: none"> 2023 Business Plan priority 3: <i>Develop a programme of work to promote the outcomes in the Legal Services Board’s policy statement on empowering consumers in a way that takes into account the unique nature of the market for costs services.</i> Develop our first Annual Risk Outlook for the profession (June 2023).
3.	Regulatory deterrents or barriers to innovation limit the Costs Lawyer profession.	<ul style="list-style-type: none"> 2023 Business Plan priority 6: <i>Investigate the risks and benefits of entity regulation amongst costs firms, including whether there is a cost effective version of entity regulation that may be practical for the CLSB to implement.</i>

		<ul style="list-style-type: none"> • 2023 Business Plan priority 7: <i>Explore ways of encouraging competition in the market for legal services and promoting the interests of consumers through considering: how the CLSB’s branding is used by the sector; how our competency frameworks can ensure the profession provides the best value to end users; and how our overall framework of regulation could best support the positive role that Costs Lawyers can play.</i> • 2023 Business Plan priority 9: <i>Design a project that looks at how the regulation of Costs Lawyers should evolve into the future, taking into account how the profile of our regulated community may change.</i>
4.	Independence of the profession is compromised through capture by certain types of clients or practising arrangements.	<ul style="list-style-type: none"> • 2023 Business Plan priority 5: <i>Deliver a programme of work aimed at harnessing the unique insights that Costs Lawyers can bring, to stimulate discussion across all the legal regulators about how legal costs can be better controlled.</i> • 2023 Business Plan priority 8: <i>Consider whether and how to implement measures to more strongly distinguish between the interests of intermediaries (professionals who instruct Costs Lawyers on a client’s behalf) and the interests of the Costs Lawyer’s ultimate client in our regulatory arrangements.</i> • Consult on changes to the Costs Lawyer Code of Conduct aimed at promoting professional independence (May to July 2023).
5.	New Costs Lawyer Qualification fails to attract sufficient student numbers or sufficiently diverse cohorts.	<ul style="list-style-type: none"> • 2023 Business Plan priority 4: <i>Using our new regulatory framework for the Costs Lawyer Qualification, work with ACL Training to accredit a new course that meets the standards for delivery and competency assurance set by the CLSB.</i> • 2023 Business Plan priority 11: <i>Continue to improve our diversity data collection and, specifically for this year, look at how working cultures and professional environments for Costs Lawyers impact on good equality, diversity and inclusion (EDI) outcomes.</i>
6.	The Costs Lawyer Competency Statement or Costs Lawyer Qualification fails to ensure that newly qualified Costs Lawyers are equipped for modern practice.	<ul style="list-style-type: none"> • 2023 Business Plan priority 4 (as above). • Implement a new framework for Qualifying Experience to be overseen by the CLSB for the first time (H1 2023).

D. Risk areas for longer-term structural reform

Our recent research and project work has identified structural risks in relation to the regulation of the costs law market. Mitigating these risks is fundamental to our regulatory approach and informs our longer-term strategic planning.

Risk statement	Source of risk	Strategic question to answer
There is a gap in how the public interest is defined/considered in the context of legal costs.	Costs Lawyers rarely serve consumers directly. There is a significant public interest issue at the heart of the costs market, but this may lie less in the protection of consumers and more in dealing with the market failure in legal costs management generally. Such a market failure appears to exist as there is no actor, outside the courts, that is currently tasked with ensuring the efficient use of resources to achieve appropriate and proportionate resolution of legal problems.	What does promoting the public interest mean in the context of the costs law market?
The authorisation of Costs Lawyers is not aligned with the public interest.	If the CLSB regulates primarily to protect consumers, it risks becoming increasingly less relevant to Costs Lawyers, who can work outside the scope of authorisation. Yet the regulatory agenda driven by the Legal Services Board, in fulfilment of its remit under the Legal Services Act, is focused on consumer-facing work and addressing unmet legal need. This model is misaligned with the public interest problem that needs to be addressed in the costs law market, and thus with impactful regulation of the Costs Lawyer profession.	What should the role of Costs Lawyers be in the legal market (i.e. what are Costs Lawyers for?) and how can that best be differentiated, through the CLSB's regulatory framework, from the role played by unregulated advisers to promote the public interest?