
In this guidance note, a Costs Lawyer is a Costs Lawyer authorised and regulated by the Costs Lawyer Standards Board (CLSB) under the Legal Services Act 2007 (LSA). This guidance seeks to inform those Costs Lawyers undertaking costs law and practice outside England and Wales (the Jurisdiction) in line with the rise of the global market.

Does a Costs Lawyer have the legal authority to act outside the Jurisdiction?

The CLSB regulates pursuant to the LSA and the right of a Costs Lawyer to act directly on behalf of a client within the Jurisdiction arises out of the LSA. The CLSB has no legal authority to grant a Costs Lawyer any authority to act as a Costs Lawyer outside of the Jurisdiction.

Scotland

On 2 September 2017, the Law Society of Scotland (LSS) considered the regulated status of a Costs Lawyer. The outcome was that the LSS agreed that a Costs Lawyer authorised and regulated by the CLSB would qualify to be registered by them as a Registered Foreign Lawyer (“RFL”) in Scotland.

Where a Costs Lawyer is a manager in a multi-national practice which has a presence in Scotland, they will need to obtain the status of a RFL whether or not the Costs Lawyer intends to carry out activities in Scotland. The status of an RFL does not give the Costs Lawyer the right to carry out any reserved activities in Scotland, it is simply necessary to comply with Scottish legislation with regard to business structure. Rules and application form can be found on the LSS website under D7.

The profession “Costs Lawyer” does not exist in Scotland. However, should a Costs Lawyer wish to carry out non-reserved activities, they may approach the LSS Registrar at registrar@lawscot.org.uk. Should a Costs Lawyer wish to carry out reserved legal activities, and they are also a qualified solicitor, they may apply to take the intra-UK test.

The EU

A Costs Lawyer can seek to establish themselves in an EU country (Host State) to provide Costs Lawyer services on either a:

- temporary or occasional basis; or
- permanent basis.

The relevant European Directives on this are 2005/36/EC (Recognition of Professional Qualification), 2006/123/EC (Services in Internal Market) and 2013/55/EU (Recognition of Professional Qualifications and Regulation on Co-operation through Internal Market Information System).

In the UK, a statutory instrument titled The European Union (Recognition of Professional Qualifications) Regulations 2015 became effective on 18 January 2016 implementing Directive requirements. Other EU member states will have introduced their own legislation to ensure compliance. It is for the Costs Lawyer to establish prevailing laws and rules in the Host State on seeking establishment. The CLSB (Home State regulator) will comply with any requirements of a Host State to enable them to consider such an application.

A Costs Lawyer established on a temporary or occasional basis in the EU

Where a Costs Lawyer is so established, the Costs Lawyer must still comply with the CLSB Code of Conduct. In addition, the Costs Lawyer must make themselves aware of, and comply with, the local laws and regulations governing their practice in the relevant country, unless such laws or regulations are inconsistent with the principles set out in the Code of Conduct.

The Costs Lawyer is required to ensure their insurer is kept fully informed of the nature of their work being undertaken to ensure their work is both covered by insurance and insured to an adequate level in relation to the risk involved.

A Costs Lawyer established on a permanent basis in the EU

Where a Costs Lawyer is so established, the CLSB Code of Conduct will not apply. Instead, prevailing laws and regulatory rules in the Host State will apply.

A Costs Lawyer looking to undertake costs law and practice outside the Jurisdiction and not within the EU

The Costs Lawyer must still comply with the CLSB Code of Conduct. In addition, the Costs Lawyer must make themselves aware of, and comply with, the local laws and regulations governing their practice in the relevant country, unless such laws or regulations are inconsistent with the principles set out in the Code of Conduct.

The Costs Lawyer is required to ensure their insurer is kept fully informed of the nature of their work being undertaken to ensure their work is both covered by insurance and insured to an adequate level in relation to the risk involved.

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