

## **GUIDANCE NOTES: PRINCIPLE 3.6**

### **Regulator: Costs Lawyer Standards Board**

**Effective date: 24 October 2018**

Principle 3.6 of the Costs Lawyer Code of Conduct reads: ***“you must not accept client money save for disbursements and payment of your proper professional fees”***.

#### **1. Why can a Costs Lawyer not accept client monies?**

By virtue of this principle, the Costs Lawyer profession is deemed by the CLSB board to be lower risk than other legal professions where practitioners can accept client monies on account. If a Costs Lawyer (not working for a firm regulated under the Legal services Act 2007) were permitted to accept client monies in advance of the service having been provided or the disbursement having been incurred, the CLSB would have to introduce a greater level of regulatory arrangements e.g. audited attendances, increased practising certificate fees, one-off finance to establish a considerable indemnity fund and annual payments in by Costs Lawyers to maintain that indemnity fund.

#### **2. What is the definition of “proper professional fees”?**

Fees incurred on having complied with a client instruction, made up of payment for:

- services provided; and
- disbursements paid on behalf of the client.

#### **3. Services**

##### **3.1 Can a Costs Lawyer request payment in advance for their services?**

Yes, where a Costs Lawyer is employed (PAYE) by, or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

An interim billing arrangement can be agreed with a client to reduce financial exposure on payment for services provided and reimbursement for disbursements.

#### **4. Disbursements**

##### **4.1 What is the definition of a “disbursement”?**

A disbursement is a sum that a Costs Lawyer spends on behalf of their client including the VAT element.

Disbursements' include, but are not limited to court fees, Counsels fees, travel costs, postal costs (if exceptional sum e.g. courier), photocopying cost (if exceptional sum).

Disbursements' do not include hourly rates, telephone calls made or received, faxes made or received, general office overheads.

A Costs Lawyer must not:

- Charge for items as disbursements when they do not amount to such.
- Increase the amount of a disbursement by adding on an element of fees.

#### **4.2 Can a Costs Lawyer request payment in advance from a client of a disbursement to be incurred by them?**

Yes, where a Costs Lawyer is employed (PAYE) by or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

A cheque should be requested from the client for that disbursement, made payable to the relevant payee e.g. the court service in respect of a court fee. In the event this is not possible, or where a Costs Lawyer considers themselves financially more vulnerable e.g. lay client instruction, an interim billing arrangement can be agreed with a client to reduce financial exposure on payment for services and reimbursement for disbursements.

## **5. Costs orders**

### **5.1 Can a Costs Lawyer receive monies on behalf of their client under a costs order in their clients favour?**

Yes, where a Costs Lawyer is employed (PAYE) by or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

In such circumstances, the paying party should be requested to:

- (i) make the payment direct to the client; or
- (ii) send a cheque, made payable to the client.

**5.2 Can a Costs Lawyer receive monies from their client to pay a costs order against their client?**

Yes, where a Costs Lawyer is employed (PAYE) by or is a partner in a firm authorised and regulated under the Legal Services Act 2007. For example, a firm of solicitors regulated by the SRA, in such circumstances prevailing SRA rules & regulations apply.

No, where a Costs Lawyer is:

- (i) working for a firm not authorised & regulated under the Legal Services Act 2007; or
- (ii) is a sole practitioner.

In such circumstances, the client should be requested to:

- (i) make the payment direct to the relevant payee; or
- (ii) send a cheque, made payable to the relevant payee.

**END**