

## REGULATORY RISK REGISTER

As at 24 October 2018

### 1. RISK SCORING

#### (i) Risk to regulatory objectives

1. Protecting & promoting the public interest.
2. Supporting the constitutional principle of the rule of law.
3. Improving access to justice.
4. Protecting & promoting the interests of the consumer.
5. Promoting competition in the provision of services.
6. Encouraging an independent, strong, diverse and effective legal profession.
7. Increasing public understanding of the citizen's legal rights and duties.
8. Promoting and maintaining adherence to the professions principles:
  - Independence and integrity.
  - Proper standards of work.
  - Acting in a client's best interests.
  - Duty to the court: acting independently in the interests of justice.
  - Confidentiality of client affairs.

#### (ii) Gross risk: Impact x Probability

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| <p><b><u>Impact (I):</u></b> The consequences of an event occurring:<br/>The event will have:</p> <p><b>Negligible (1):</b> Very little consequence</p> <p><b>Moderate (3):</b> Some impact but will not have serious consequences</p> <p><b>Serious (5):</b> Serious consequences</p> | <p><b><u>Probability (P):</u></b> The likelihood of an event occurring:<br/>The event is:</p> <p><b>Low (1):</b> Very unlikely to occur</p> <p><b>Medium low (2):</b> Unlikely to occur</p> <p><b>Medium high (3):</b> Likely to occur</p> <p><b>High (4):</b> Very likely to occur</p> |
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|        |   |                    |              |             |              |
|--------|---|--------------------|--------------|-------------|--------------|
|        | 5 | 5<br>YELLOW        | 10<br>YELLOW | 15<br>RED   | 20<br>RED    |
| IMPACT | 3 | 3<br>GREEN         | 6<br>YELLOW  | 9<br>YELLOW | 12<br>YELLOW |
| 1      | 1 | 1<br>GREEN         | 2<br>GREEN   | 3<br>GREEN  | 4<br>GREEN   |
|        |   | 1                  | 2            | 3           | 4            |
|        |   | <b>PROBABILITY</b> |              |             |              |

(iii) Adequacy of controls

| Descriptor                         | Score | Description  |
|------------------------------------|-------|--|
| <b>Fully effective</b>             | 5     | Controls are well designed for the risk and address the root causes. The Executive and Board are comfortable that controls are effectively applied, monitored and assured                    |
| <b>Substantially effective</b>     | 4     | Most controls are designed correctly and are in place and effective. Some more work to be done to improve operating effectiveness, or doubts about operational effectiveness and reliability |
| <b>Partially effective</b>         | 3     | Controls in place but are not sufficient to fully mitigate risk. There are potential weaknesses in the application of controls and limited assurance or reporting available                  |
| <b>Largely ineffective</b>         | 2     | Significant control gaps. Either controls do not treat root causes or they do not operate at all effectively   |
| <b>None or totally ineffective</b> | 1     | Virtually no credible control and limited confidence in the application or oversight of risk activity  |

2. RISK REGISTER

|                                       |   |                                   |
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| <b>Logged by board:</b><br>31/10/2011 | <b>Reference: R1</b>  | <b>Risk score I(3) x P(1) = 3</b> |
| <b>Risk</b>                           | <b>First-tier complaints procedure not being communicated to clients</b>  |                                   |
| <b>Risk to objectives</b>             | Regulatory objective: Protecting and promoting the public interest<br>Regulatory objective: Increasing public understanding of citizen's legal rights and duties.<br>Professional principle: Proper standards of work   |                                   |
| <b>Evidence of risk</b>               | Ongoing monitoring has not evidenced this is happening  |                                   |
| <b>Controls</b>                       | <ul style="list-style-type: none"> <li>• October 2011: Complaint procedure guidance issued, on CLSB website.</li> <li>• October 2011: Costs Lawyers not working for SRA firm required to file first-tier complaints procedure with CLSB each year.</li> <li>• April 2015: Question asked on client feedback facility on CLSB website "Were you aware of your Costs Lawyers complaints procedure?"</li> <li>• October 2016: New client survey asks question: "Did that client care letter make you aware of your Costs Lawyers complaints procedure?"</li> <li>• 24 January 2017: Following consumer research, jointly funded by all ARs, the CLSB guidance note reviewed and revised</li> <li>• 25 April 2017: Guidance note reviewed and revised to include a section on whether a Costs Lawyer can charge for complaint resolution</li> </ul> |                                   |
| <b>Control adequacy</b>               | 4   |                                   |

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| <b>Priority area of risk</b>      | No, as no evidence this has happened since 31 October 2011   |
| <b>Actions outstanding/status</b> | Feedback from client survey (October 2016 to date) has not identified there are any issues with client care letters being issued or the level of information contained therein |
| <b>Commentary</b>                 | Continue to monitor outcome of new client survey and review guidance note on on-going basis  |

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| <b>Logged by board:<br/>31/10/2011</b> | <b>Reference: R2</b>   | <b>Risk score: I(1) x P(3) = 3</b> |
| <b>Risk</b>                            | <b>Costs Lawyer (not working for SRA regulated firm) accepting client monies</b>   |                                    |
| <b>Risk to objectives</b>              | Regulatory objective: Protecting and promoting the public interest<br>Professional principle: To act with integrity<br>Professional principle: To act in the best interests of the client  |                                    |
| <b>Evidence of risks</b>               | Ongoing monitoring has not evidenced this is happening   |                                    |
| <b>Controls</b>                        | <ul style="list-style-type: none"> <li>• Covered under Principle 3.6 of Code of Conduct.</li> <li>• August 2012: Guidance note on Principle 3.6 issued, on CLSB website.</li> <li>• October 2016: New client survey asks question "Did you send any monies to your Costs Lawyer other than in payment of an invoice?"</li> </ul> |                                    |
| <b>Control adequacy</b>                | 4  |                                    |
| <b>Priority area of risk</b>           | No, as no evidence this is happening since 31 October 2011   |                                    |
| <b>Actions outstanding/status</b>      | No evidence from client survey (October 2016 to date) and complaints that this is happening  |                                    |
| <b>Commentary</b>                      | Continue to monitor outcome of client survey   |                                    |

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| <b>Logged by board:<br/>31/10/2011</b> | <b>Reference: R3</b>  | <b>Risk score: I(2) x P(2) = 4</b> |
| <b>Risk</b>                            | <b>Minimum level of professional indemnity insurance is not in place</b>  |                                    |
| <b>Risk to objectives</b>              | Regulatory objective: Protecting and promoting the public interest<br>Professional principle: To act in the best interest of the client   |                                    |
| <b>Evidence of risk</b>                | None that this is happening   |                                    |
| <b>Controls</b>                        | <ul style="list-style-type: none"> <li>• 17 November 2013: Guidance note issued</li> <li>• Costs Lawyers not working for an SRA regulated firm are required to file evidence of insurance cover annually when applying for a practising certificate</li> <li>• Following consultation, on 9 April 2014 practising rule 10 on insurance was revised and communicated out to all Costs Lawyers</li> <li>• 22 April 2014: Guidance note revised following practising rule on insurance review</li> </ul> |                                    |

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|                                   | <ul style="list-style-type: none"> <li>January 2016: Report from insurers on level of insurance claims, none evidence a lack of insurance cover</li> <li>April 2017: Trend analysis identified since 2014, Costs Lawyers not working for an SRA regulated firm have increased PI insurance cover Policies of value £1m or less have dropped from 80.4% to 69.7%</li> <li>Annual analysis on the levels of insurance in place in excess of minimum</li> </ul> |
| <b>Control adequacy</b>           | 4  |
| <b>Priority area of risk</b>      | No, as no evidence of inadequate insurance has been identified since 31 October 2011   |
| <b>Actions outstanding/status</b> | <ul style="list-style-type: none"> <li>On-going annual filing of insurance by a Costs Lawyer not working for SRA regulated firm when applying for an annual practising certificate</li> </ul>  |
| <b>Commentary</b>                 | Continue to monitor trends   |

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| <b>Logged by board:</b><br>24/10/17 | <b>Reference: R4</b>   | <b>Risk score: I(5) x P(2) = 10</b> |
| <b>Risk</b>                         | <b>ACL, named in the Legal Services Act 2007 as Approved Regulator (role undertaken by CLSB under delegation) consulted on financial constraints in October 2017</b>   |                                     |
| <b>Risk to objectives</b>           | Regulatory objective: All<br>Professional principles: All  |                                     |
| <b>Evidence of risk</b>             | ACL minutes, ACL accounts, ACL discussion paper to members, ACL EGM on 21 February 2018  |                                     |
| <b>Controls</b>                     | Controls being implemented by ACL: <ul style="list-style-type: none"> <li>October 2017: ACL issued discussion paper to its members</li> <li>October 2017: ACL discussed situation with its members at National Conference</li> <li>October 2017: LSB made aware of situation for oversight purposes</li> <li>21 February 2018: ACL held EGM</li> <li>On-going: ACL working with accountants on their financial position</li> </ul> |                                     |
| <b>Control adequacy</b>             | Outside control of CLSB  |                                     |
| <b>Priority area of risk</b>        | Yes, as current and immediate  |                                     |
| <b>Actions outstanding/status</b>   | Work with ACL and LSB (as required) on any ACL proposal  |                                     |
| <b>Commentary</b>                   | This is impacting on the reputation of the profession which is small and requires stability  |                                     |