

DRAFT

Annex 2

CLCA: Part 2
Statement of legal knowledge
Ethics, procedure and costs law

This statement sets out the legal knowledge of ethics, procedure and costs law expected of a Costs Lawyer at the point of qualification.

4. ETHICS, PROFESSIONAL CONDUCT & REGULATION

4(a)	Costs Lawyer code of conduct	Understanding the professional standards set out herein, including supporting guidance notes in issue, in particular: <ul style="list-style-type: none">• Authorised rights (reserved legal activity)• Mandatory seven principles of regulation• Client care letters• Handling client monies• Duties to the Court• Confidentiality• Unsolicited approaches to private (lay) persons• Internal complaint handling (first-tier)
4(b)	Complaint handling (second tier)	Role of the Legal Ombudsman (service complaints) Role of the CLSB (professional conduct complaints)
4(c)	Costs Lawyer practising rules	Understanding the professional standards set out therein, including supporting guidance notes in issue, in particular: <ul style="list-style-type: none">• The Costs Lawyer register• Notification requirements• Expiration of a certificate• CPD• Professional indemnity insurance• Conditions on a practising certificate
4(d)	The Legal Services Act 2007	Role of the approved regulator Offence under s.14 Offence under s.17 Penalties
4(e)	Approved legal regulators	Understanding of the role of the approved legal regulators under the Legal Services Act 2007: <ul style="list-style-type: none">• Bar Standards Board• Solicitors Regulation Authority• C.IIeX Regulation• Costs Lawyer Standards Board• Council of Licensed Conveyancers• IpReg

		<ul style="list-style-type: none"> • Master of Faculties
4(f)	Representative bodies	<p>Understanding of the role of the representative bodies of the legal professions:</p> <ul style="list-style-type: none"> • Bar Council • Law Society • C.Ilex • Association of Costs Lawyers
4(g)	Conflict of interest	<p>What a conflict of interest is</p> <p>What to do in such circumstances</p>
4(h)	Vulnerable consumers	<p>Definition of a vulnerable consumer</p> <p>Identifying a vulnerable consumer</p> <p>Categories of vulnerability</p> <p>Good practice</p>
4(i)	Accredited Costs Lawyer	<p>Rules applicable to a Costs Lawyer accredited by the CLSB to provide CPD</p>

5. CIVIL PROCEDURE RULES

5(a)	Anatomy of civil cases	<p>Procedural steps from instruction to trial</p>
5(b)	Pre-action considerations	<p>Pre-action enquires</p> <p>Investigations</p> <p>Pre-action protocols</p> <p>Obtaining evidence</p> <p>Quantification of claims</p> <p>Letters before action</p> <p>Negotiation</p>
5(c)	Parties	<p>The different categories of parties</p> <p>Rules relating to different parties</p> <p>Minors and patients</p> <p>Counterclaims under Part 20 proceedings</p>
5(d)	Commencing proceedings	<p>Limitation periods</p> <p>Extension to limitation periods</p> <p>Jurisdiction of County Court & High Court</p> <p>Procedure</p>
5(e)	Pleadings	<p>Different types of pleadings</p> <p>Purpose of pleadings</p> <p>Striking out</p> <p>Requests for further information</p>

5(f)	Service	<p>General rules as to service</p> <p>Methods</p> <p>Deemed service</p> <p>Dispensing with service</p> <p>Proving service</p> <p>Service outside of the jurisdiction</p>
5(g)	Allocation of tracks	<p>Small claims track:</p> <ul style="list-style-type: none"> • Avoidance of complicated procedures • Standard directions • Determination without hearings • Hearings • Appeals • Costs <p>Fast track:</p> <ul style="list-style-type: none"> • Allocation • Directions • Time-tabling • Expert evidence • Re-allocation • Pre-trial procedures • Trials <p>Multi track:</p> <ul style="list-style-type: none"> • Allocation • Directions • Case management • Conferences • Case summaries • Pre-trial procedures • Trials
5(h)	Ending claims without trial	<p>By consent</p> <p>Striking out</p> <p>Judgement in default</p> <p>Procedure for setting aside or varying a default judgement</p> <p>Summary judgement</p> <p>Stay of proceedings</p> <p>Discontinuance</p> <p>Dismissal of proceedings for non-compliance</p> <p>Part 36 acceptance</p>

5(i)	Applications, directions & orders	<ul style="list-style-type: none"> Applications with or without notice Supporting evidence Telephone hearings Costs & case management conferences Pre-trial reviews Injunctions Interim relief Sanctions Relief from sanctions
5(j)	Interim relief, interim payments	<ul style="list-style-type: none"> General rules regarding applications Different types of application Procedure relating to applications Summary judgement Interim remedies including interim payments on account Injunctions Security for costs
5(k)	Offers	<ul style="list-style-type: none"> Part 36 offers Form & content of offers Offers by claimants and defendants Offers to settle claims for provisional damages Rules as to time Clarification Acceptance of offers Costs consequences Effect of acceptance Restriction on disclosure of offers Deduction of benefits
5(l)	Disclosure	<ul style="list-style-type: none"> What are documents? The nature & standard of disclosure Searches Specific disclosure Inspection Non-party disclosure Privilege Confidentiality
5(m)	Evidence	<ul style="list-style-type: none"> Principles of evidence in civil litigation The burden and standard of proof The uses of presumptions Testimony Hearsay evidence Witness statements Affidavits

		Civil Evidence Act Expert evidence
5(n)	Trial	Preparation for trial Trial procedure
5(o)	Judgements & orders	Rules about enforcement judgements & orders Methods of enforcement
5(p)	Appeals	When appeals may be made Time limits Procedure

6. LEGAL COSTS

6(a)	Costs	Statutory definition of costs
6(b)	Costs orders	By the court By consent Interim costs Wasted costs Security for costs Costs in any event Costs in the case/application Costs reserved Costs thrown away No order for costs Each party to pay their own costs Costs of appeals and in the lower Court
6(c)	Who can claim costs	In-house lawyers Litigants in person Authority to assess
6(d)	Fee earners	The different grades of fee earners Guideline rates Enhanced rates Prescribed rates
6(e)	Disbursements/expenses	What is classed as a disbursement or expense Counsel Witnesses Experts Local travelling Agency charges

6(f)	Counsel	The different fees that may be claimed The quantum of fees of Counsel Requirements on Counsel to justify fees claimed
6(g)	What can be claimed	Fees & charges of the solicitor Disbursements Witness allowances Non-professional witness fees VAT Lawyer "success fees" After the event insurance premium Litigant in person costs
6(h)	Interest on costs	When interest may be claimed on costs due From when Items of costs where interest may be claimed Rates of interest
6(i)	Costs budgeting	Form Process
6(j)	Court of protection/public guardianship office costs	Rules and procedure on costs Categories of work Special rules relating to costs that might be allowed Forms of bills Detailed assessment procedure Costs orders
6(k)	Divorce/family law proceedings costs	The Family Proceedings Rules When costs orders inter-parties are appropriate When costs estimates and statements are required When expert advice may be allowed Summary assessment Lump sum orders Offers Appeal against costs orders
6(l)	Criminal court costs	Costs payable out of central funds: <ul style="list-style-type: none"> • Procedure • Form of bill of costs • Time limits • Determination procedure • Discretion of the Court • The Prosecution of Offences Act 1985 • The different orders that can be made • Appeals

		<p>Costs payable between the parties:</p> <ul style="list-style-type: none"> • Procedure • Form of bill of costs • Time limits • Discretion of the Court • The awards appropriate • The different orders that can be made <p>Wasted costs:</p> <ul style="list-style-type: none"> • Procedure • The power to make a wasted costs order • The circumstances when such orders may be made • Against whom such an order may be made • Amounts that may be ordered
6(m)	Arbitration costs	<p>Fees of arbitration</p> <p>Limiting costs</p> <p>Procedures for assessment of costs</p> <p>Appeals</p>
6(n)	Tribunal costs	<p>When costs awards may be appropriate</p> <p>Limiting costs</p> <p>Procedure for assessment of costs</p> <p>Appeals</p>
6(o)	Non-contentious costs	<p>Statutory definition</p> <p>Applicable case law</p> <p>Basis of charging</p> <p>Contingency fees</p> <p>Non-contentious business agreements</p> <p>Charging in conveyancing</p> <p>Charging in probate and estates</p>
6(p)	Contentious costs	<p>Statutory definition</p> <p>Applicable case law</p> <p>Basis of charging</p> <p>Contingency fees</p> <p>Contentious business agreements</p>
6(q)	Entitlement to costs inter-parties	<p>CPR 44.3</p> <p>Deemed costs order</p> <p>Interlocutory costs order</p> <p>Pre-action applications</p> <p>Part 36 offers</p> <p>Agreements</p> <p>Appeal</p>

		<p>Pre-emptive costs orders</p> <p>Security for costs</p> <p>Judicial review</p> <p>Costs against non-parties</p> <p>Misconduct</p> <p>Wasted costs</p>
6(r)	Solicitor & own client costs	<p>What constitutes solicitor and own client costs</p> <p>Formalities of Solicitors bill</p> <p>Distinguishing between costs payable to clients' own lawyer and inter-parties</p> <p>Retainers:</p> <ul style="list-style-type: none"> • Nature of retainers • Different types • Termination • Procedure on Solicitor own client assessment
6(s)	The indemnity principle and exceptions	<p>What the indemnity principle is</p> <p>When it applies</p> <p>Exceptions to the rule</p>
6(t)	Bases of assessment	<p>The difference between each and when each is appropriate:</p> <ul style="list-style-type: none"> • Standard basis • Indemnity basis
6(u)	Detailed assessment	<p>Procedure for assessment</p> <p>Costs of assessment</p> <p>Appeals procedure</p>
6(v)	Proportionality	<p>What it means, its development, how it is applied and its impact on costs:</p> <ul style="list-style-type: none"> • Old test • New test • Reasonable costs
6(w)	Costs under different tracks	<p>Including filing timescales and penalties:</p> <ul style="list-style-type: none"> • Small claims track • Fast track • Multi track
6(x)	Costs estimates and costs capping	<p>What a costs estimate is</p> <p>When costs estimates must be provided</p> <p>The importance of costs estimates</p> <p>Enforcing costs estimates</p> <p>When costs may be capped</p>

		How costs are capped
6(y)	Qualified one-way costs-shifting	Current rules Current case law
6(z)	Costs in third party claims	Current rules
6(aa)	Costs against non-parties	Current rules
6(ab)	Assessments	Summary, detailed and provisional Time limits Stays Powers of the court Venue Commencing detailed assessment proceedings Period of service Sanctions for delay Points of dispute Replies Detailed assessment hearing Applications Further information Disclosure Interim & final certificates Costs offers Costs of detailed assessment proceedings
6(ac)	Fixed costs & fees	Pre-action protocols
6(ad)	Costs limits	
6(ae)	Settlement	Process and implications of: <ul style="list-style-type: none"> • Offers • Acceptance • Rejection • Discontinued claims • Part 36
6(af)	Costs appeals	When a decision on costs may be appealed Merits of costs appeals Permission to appeal Time limits on appeals Appeal procedures
6(ag)	Liens	The nature of a lien Priorities Waiver

		Enforcing a lien Discharge of a lien
6(a)	Charging orders	Circumstances where a Solicitor may apply for a charging order in respect of their costs

7. FUNDING (LEGAL AID)

7(a)	Administration	Role of the Legal Aid Agency Role of Criminal Case Unit (CCU) Role of the National Taxing Team (NTT)
7(b)	Law governing legal aid	Statute Case law Precedent
7(c)	Applying for legal aid	Who is entitled How to apply and eligibility Case types funded by legal aid Contract terms
7(d)	Civil legal aid	Types of cases covered Scope of legal aid granted Financial limits What can be claimed and when Bills of costs for court and CCMS processing Claim forms for old style paper-based cases All aspects of CCMS operations Remuneration Procedure
7(e)	Family legal aid	Types of cases covered Scope of legal aid granted Financial limits What can be claimed and when Bills of costs for courts and CCMS processing Claim forms for old style paper-based cases Remuneration Procedure
7(f)	Criminal legal aid	Police station advice: <ul style="list-style-type: none"> • What can be claimed • Claim form • Remuneration • Procedure

		<p>Magistrates court:</p> <ul style="list-style-type: none"> • Costs that may be claimed • The types of fees • The different types of cases • Remuneration • Bills of costs both old style paper and online submission • Claim forms both old style paper and online submission • Procedure • Timescales • Appeals <p>Crown Court:</p> <ul style="list-style-type: none"> • Costs that may be claimed • The types of fees • The different types of cases • Remuneration • Bills of costs both old style paper and online submission • Claim forms both old style paper and online submission • Procedure • Timescales • Appeals <p>Court of Appeal:</p> <ul style="list-style-type: none"> • Costs that may be claimed • The types of fees • The different types of cases • Remuneration • Bills of costs both old style paper and online submission • Claim forms both old style paper and online submission • Procedure • Timescales • Appeals
7(g)	Costs protection for client	Recovery, including recovery against a legally aided party or the Lord Chancellor

8. FUNDING (OTHER)

8(a)	Retainers	What a retainer is
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8(b)	Contingency fees	The nature of contingency fees Where they are lawful and where they are not
8(c)	Conditional fee agreements	With success fees Without success fees Discounted conditional fee agreements The law relating to enforceability, base costs, success fee and procedure
8(d)	Collective conditional fee agreements	The law relating to enforceability, base costs, success fee and procedure.
8(d)	Speculative fee agreements	
8(e)	Variable fee agreements	
8(f)	Third party funding	Champerty & maintenance Indemnification Subrogation Recovery of costs inter-parties
8(g)	Damages based agreements	The law relating to the form and enforceability of such agreements
8(h)	Insurance policies	Before the event After the event Applicable civil procedure rules & practice directions Case law Recovery of premiums