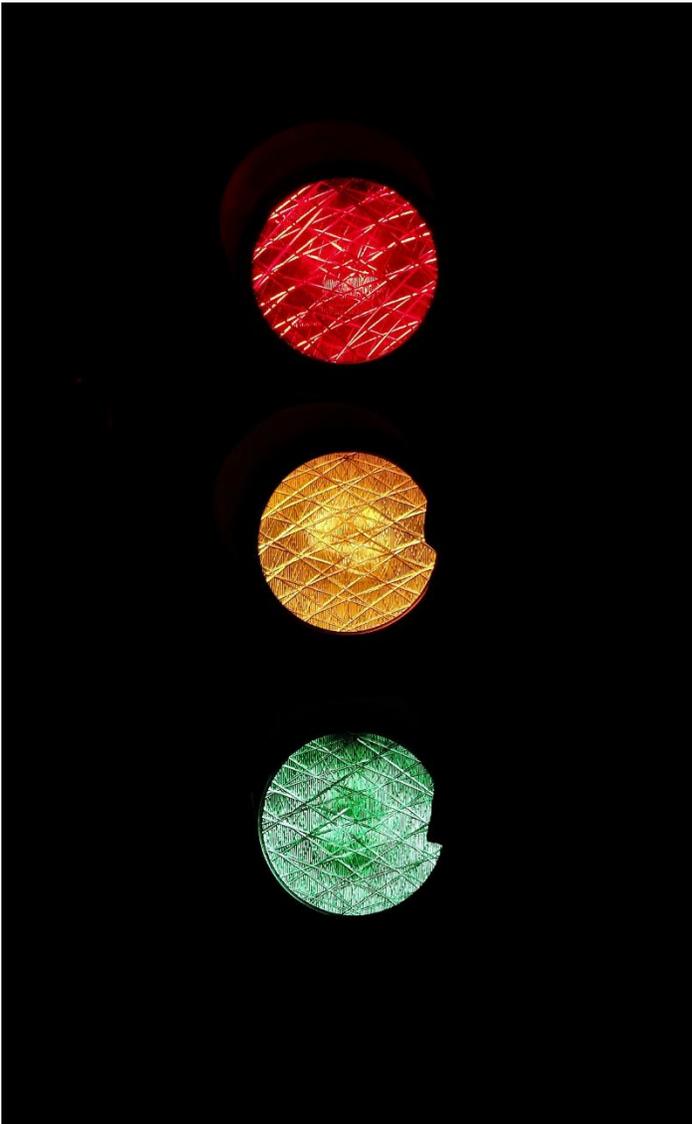

Policy statement on enforcement and sanctions



Effective date: 1 May 2020

Costs Lawyer Standards Board

CLSB
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Purpose of this policy statement

1. The purpose of this policy statement is to promote proportionate, consistent and fair decision making by the Costs Lawyer Standards Board (CLSB) when considering the conduct of a Costs Lawyer. It supplements two sets of regulations – the Disciplinary Rules and Procedures (DR&P) and the Practising Rules – both of which can be found in the [Costs Lawyer Handbook](#) on the CLSB website.
2. The DR&P set out the types of disciplinary sanctions that can be imposed when a Costs Lawyer breaches our rules. The range of outcomes under the DR&P – which can be imposed by the CLSB or agreed with the Costs Lawyer – include:
 - A warning letter
 - A written undertaking
 - Condition(s) on a practising certificate
 - Payment of a financial penalty
 - Suspension of a practising certificate for a fixed term
 - Permanent revocation of a practising certificate
3. The Practising Rules specify the circumstances in which the CLSB can refuse an application for a practising certificate, revoke a Costs Lawyer’s practising certificate, or impose practising conditions. The Practising Rules also require Costs Lawyers and prospective Costs Lawyers to disclose specified events (such as criminal convictions, financial measures and regulatory breaches) when they apply for a practising certificate and throughout the year. Disclosures can affect a Costs Lawyer’s eligibility for a practising certificate or attract practising conditions.
4. This policy statement will be taken into account by the CLSB when making decisions under the DR&P and/or the Practising Rules in relation to a Costs Lawyer’s conduct. This includes decisions taken by a Conduct Committee or Conduct Appeal Committee in the context of disciplinary proceedings. The policy statement should be read in conjunction with the DR&P, Practising Rules and any other relevant CLSB regulations. The specific provisions of the DR&P and Practising Rules take precedence over this policy statement.

Purpose of the rules

5. The DR&P and Practising Rules seek to:
 - Promote:
 - good practice by Costs Lawyers;
 - public awareness of the standards that can be expected of a Costs Lawyer;
 - confidence that the CLSB will take appropriate action where poor conduct is identified and hold individuals to account; and
 - confidence in the Costs Lawyer profession on the part of all involved in the administration of justice.
 - Protect:
 - consumers;
 - the public interest;
 - the reputation of the Costs Lawyer profession and the CLSB; and
 - the rights of Costs Lawyers to have conduct matters dealt with fairly and promptly.

6. In particular, the purpose of imposing disciplinary sanctions is to protect an infringing Costs Lawyer's current and future clients from poor outcomes, help prospective clients make informed purchasing decisions, and deter additional conduct breaches by the same Costs Lawyer or others in the profession.

Approach to enforcement

7. The CLSB is primarily concerned with taking enforcement action against serious breaches, not those which are merely trivial. Behaviour involving dishonesty, lack of integrity or significant harm to consumers, or posing a high risk to the public interest, to the reputation of the profession or to the administration of justice will always be serious.

8. Whilst the CLSB's core concern is the regulation of Costs Lawyers' professional conduct, in some circumstances it will be appropriate to take action in relation to conduct that occurs outside of practice – the most obvious example being where

a Costs Lawyer is convicted of a criminal offence in their private life. We are particularly concerned with the impact of conduct outside of practice (including in the private lives of Costs Lawyers) where:

- the matter is so serious that it is capable of damaging public confidence in the profession; or
- the behaviour implies a risk to the safe delivery of Costs Lawyer services by the individual in the future.

Mitigation and aggravation

9. Below is a table listing the main factors that we are likely to take into account as mitigating or aggravating a Costs Lawyer’s conduct. These factors – and any other relevant factors specific to the case – will determine the nature and level of sanctions imposed under the DR&P and/or the impact on the Costs Lawyer’s ability to practice under the Practising Rules. The factors in the table can also be used in deciding whether conduct is serious enough to warrant action at all.

Less serious/mitigating factor	More serious/aggravating factor
The conduct was of low risk to the public interest	The conduct was of high risk to the public interest
The conduct was of low risk to the reputation of the profession	The conduct was of high risk to the reputation of the profession
The conduct was of low risk to the administration of justice	The conduct was of high risk to the administration of justice e.g. it led to an obstruction of justice or a court being misled
The conduct was a simple mistake or poor service with no evidence of knowingly or recklessly breaching applicable rules or ignoring ethical issues	There is evidence of dishonesty, lack of integrity, recklessness or deliberate breach
There was no profit made or intention to profit from the conduct	The Costs Lawyer profited or intended to profit from the conduct

There was no loss or detriment to the complainant or third parties	There was loss or detriment to the complainant or third parties
The client was a sophisticated or professional client appropriately advised of risks	There was poor client information and/or client vulnerability was not addressed
The conduct was an isolated incident (unless a very serious one)	There was a pattern of minor or serious failings
The conduct was self-reported and/or remedial action was promptly implemented and steps taken to prevent recurrence	There was no self-reporting and/or no steps were taken to remedy the breach or prevent recurrence
Remorse and genuine insight into the conduct has been demonstrated	No remorse or genuine insight into the conduct has been demonstrated
The Costs Lawyer was junior or inexperienced, or had no control over the circumstances leading to the breach	The Costs Lawyer was senior or experienced, or had responsibility for the circumstances leading to the breach
The Costs Lawyer collaborated with the CLSB and provided full information	The Costs Lawyer did not collaborate or provide information and/or attempted to conceal information
There have been no prior findings relating to the Costs Lawyer by the CLSB or other regulator	There have been prior findings relating to the Costs Lawyer by the CLSB or other regulator
In respect of any prior finding by the CLSB or other regulator, the Costs Lawyer addressed sanctions imposed	There was a failure by the Costs Lawyer to address a previous sanction (for example, comply with a warning letter or pay a financial penalty)
Any criminal conviction was for a low level offence	A criminal conviction was for a more serious offence (including those involving dishonesty or lack of integrity, violence or sexual misconduct) and/or there was a pattern of low level offences

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