



CLSB



Costs Lawyer Standards Board

How could Costs Lawyers reduce the costs of legal services?

PROJECT REPORT

COSTS LAWYER STANDARDS BOARD

JUNE 2022

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FOREWORD



Kate Wellington
Chief Executive

The Costs Lawyer Standards Board (CLSB) regulates Costs Lawyers in England and Wales. We exist to protect the interests of consumers and the wider public. To do this, we set the professional standards that Costs Lawyers must meet and take action where a Costs Lawyer's conduct falls below those standards.

In 2021, we put forward a proposal to the Regulators' Pioneer Fund for a research project that would explore the question: How could Costs Lawyers help to reduce the costs of legal services? Our funding bid was successful, and we engaged consulting firm Hook Tangaza to work with us in crafting a research programme to look for answers.

Our research focused on the types of services that advisers (regulated or unregulated) specialising in costs are, or might be, involved in providing. We then considered whether any regulatory or legislative change might remove barriers to innovation or encourage innovation. The main questions we explored were:

- How might advisers specialising in costs drive services in a way that exerts a downward pressure on the costs of legal services?
- Would any regulatory or legislative change relevant to Costs Lawyers remove barriers to capturing this benefit or capture greater benefits?

The results of our research are set out in this report, which begins with a summary of the key project outcomes and then sets out the full research findings in a paper by Hook Tangaza.

I would like to express my gratitude to everyone who helped bring this project to life. In particular, I would like to thank the members of the project challenge board – Stephanie McIntosh (CLSB board member), Elisabeth Davies (Chair, Office for Legal Complaints) and Fran Gillon (Chief Executive, Intellectual Property Regulation Board) – as well as our Director of Policy, Heather Clayton, who led the work programme for the CLSB, and our colleagues at Hook Tangaza.

The project was funded by the Regulators' Pioneer Fund, an initiative of the Department for Business, Energy and Industrial Strategy. The Fund aims to keep the UK at the forefront of regulatory thinking and experimentation. It sponsors projects led by regulators or local authorities which aim to help create a UK regulatory environment that encourages business innovation and investment.

KEY FINDINGS

1

Clients do not feel that legal costs are under control

During the course of our research, we repeatedly heard the message that clients want legal costs associated with resolving disputes to be better controlled.

All of the Costs Lawyers we interviewed believed that they had an impact on costs rather than just moving costs between parties. This view was supported in the wider market survey carried out, in which 88% of those responding said that they believed that it was part of their role to impact overall legal costs and not just to redistribute costs away from their clients.

The people we spoke to were also clear that they do not believe that further civil litigation reform is the answer (or at least the whole answer) and there is more that all legal regulators could do to support better control of costs earlier in the process, even before the stage of costs budgeting.

CLSB next steps: The CLSB will plan in a programme of work aimed at harnessing the unique insights that Costs Lawyers can bring to stimulating discussion across all the legal regulators about how legal costs can be better controlled.

2

Under-awareness of the benefits of using Costs Lawyers

Our research revealed a great deal of evidence to support the proposition that the Costs Lawyer profession has the potential to have a much bigger impact than it does today. One key reason is that awareness of Costs Lawyers and the benefits of using their services appears to be low.

At present, because of the dependence of the Costs Lawyer profession on instructions from solicitors, there is a limit on the demand for any innovative services. If Costs Lawyers were better known beyond the niche costs law market, their contribution to the development of innovation in the sector could be increased.

CLSB next steps: While it is not within the CLSB's remit to undertake promotion activities for the sector it regulates, it is within our remit to encourage competition in the market for legal services and promote the interests of service users. We will therefore look at: how the CLSB's branding is used by the sector; how our competency frameworks can ensure the profession provides the best value to end users; and how our overall framework of regulation could best support the positive role that Costs Lawyers can play.

3

Entity regulation for firms of Costs Lawyers could bring benefits

Strengthening the position of Costs Lawyers as independent actors in the sector, outside of employment in solicitors' firms, has the potential to harness numerous benefits, including better access to work for Costs Lawyers directly from large clients which would benefit those clients. One way that this could be done might be by regulating entities rather than individual Costs Lawyers.

Entity regulation could also play a role in encouraging innovation. We saw encouraging signs of innovation most often in larger organisations, and a regulatory framework that supported flourishing firms of Costs Lawyers may be beneficial to innovation.

CLSB next steps: In our next business plan, we will allocate resources to further investigation of the costs and benefits of entity regulation, including whether there is a cost effective version of entity regulation that may be practical to implement.

4

The profession could think differently about the end user

The reference by a number of interviewees to their use of Costs Lawyers as 'independent' advisors - acting almost as barristers might - raises the possibility that a stronger distinction between the interests of instructing solicitors (or others) and the ultimate client could be reflected in the regulatory principles set by the CLSB for Costs Lawyers.

CLSB next steps: We will schedule in work to examine this recommendation in more detail, and consult Costs Lawyers on the benefits and costs of making such a change.

FULL RESEARCH FINDINGS

**Report prepared by Hook Tangaza
for the Costs Lawyer Standards Board**



REPORT TO THE COSTS LAWYER STANDARDS BOARD

How can Costs Lawyers help to control legal costs?

March 2022

Authors:

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Date:

30 March 2022

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Executive Summary

This report is the final output of a research project that aimed to explore whether the services (currently or potentially) provided by cost lawyers could help to exert a downward pressure on the cost of legal services and if so, whether regulatory and/or legislative changes would be needed to make this happen in practice.

These issues were explored through a series of research activities that delivered:

1. A mapping of the size, types of services, existing and emerging skills, functions and authorisations of Costs Lawyers (and to some extent, unregulated costs professionals) in England & Wales;
2. A review of the types of services that are likely to assist individual consumers and small businesses to check and reduce legal costs and an indication of where these are currently provided by the costs law profession, or others;
3. An analysis of the services provided by cost professionals, or other analogous providers, undertaking costs work in other jurisdictions around the world including a consideration of the extent to which these services exert a downward pressure on legal costs in those jurisdictions;
4. An assessment of the wider legal costs environment in England and Wales and analysis of the regulatory and legislative environments including identifying their potential impact on innovative services. The research also included a review and comparison with other Common Law jurisdictions for any pertinent lessons and observations.

The findings and recommendations of this report are based on desk research; a series of interviews with individual Costs Lawyers working in-house (in solicitors' firms) in costs law firms and as sole practitioners; interviews with some of their clients and a survey that received responses from a wide selection of costs professionals. Details of the methodology undertaken are at Annex C. The report has seven sections:

- **Part 1 – The Costs Problem.** This section provides context to the project through a brief historical exploration of the wider legal costs environment and the various efforts to manage legal costs over the years. It outlines the numerous civil justice reforms, from the Woolf reforms of the mid-1990s to the most recent extensions of the fixed costs regime which have attempted to control costs and remove unnecessary complexities in the litigation procedure. It concludes that, unfortunately, action undertaken through civil justice reforms to control costs are often ineffective as the real problem lies further upstream in the attitudes to charging and the costs behaviour of legal practitioners.

It is against this background that the research has aimed to understand how costs professionals, and regulated Costs Lawyers in particular, currently influence the control of costs in legal services. More importantly, it has also aimed to examine whether they could play a bigger role in helping to control legal costs, and if not, what might be preventing that from happening.

- **Part 2 – The Costs Lawyers Profession** – This section provides a brief background to the Costs Lawyers profession and its evolution from unregulated costs draftsmen to the 2007 Legal Services Act which led to the creation of Costs Lawyer Standards Board. It also discusses some of the nuances of the profession, including what is and is not permitted by their regulatory framework and how they fit in with the wider legal services sector. In particular,

the niche role they play, providing services on a variety of issues relating to legal costs but without any exclusive rights in relation to any of the services they provide.

- **Part 3 – Who are Costs Lawyers?** – Part 3 is a mapping of the Costs Lawyers profession, their expertise and specialist services they offer, the entities in which they work and who their clients are. We found that regulated Costs Lawyers account for little more than one-sixth (around 17.5%) of the costs law market, with an almost equal number in costs law firms and SRA regulated law firms (86% of the profession) and about 10% working alone and the rest in the public sector or in insurance firms. We undertook a survey of costs professionals in which 73% of respondents described their 'client' as an instructing solicitor, a view confirmed by our qualitative interviews. This reinforces the evidence in the wider costs law market which suggests that there are few obviously consumer facing costs services on offer.
- **Part 4 – The impact of Costs Lawyers** – This section assesses the overall impact of Costs Lawyers on legal costs bearing in mind the size of the profession and its expertise as discussed in Part 3. Although the evidence we found of the impact of Costs Lawyers on the cost of legal services was mixed, there were much more positive views expressed about the potential for Costs Lawyers to have an impact on the pricing of solicitors' fees and on legal costs in general. Similarly, whilst there was little evidence of any significant innovation in the profession at present, there were indications of where such innovation could come from, and that it could make a difference. Overall, however, a combination of the small size of the profession, lack of market awareness of the existence and expertise of Costs Lawyers, and dominance of the solicitor client, have combined to dampen the ability of Costs Lawyers to make a bigger impact on legal costs.
- **Part 5 – Lessons from elsewhere** – Following a wider review, this section considers how other jurisdictions are handling costs issues and whether they have professionals playing a similar role to Costs Lawyers. It focuses on four jurisdictions – Australia, Canada, Northern Ireland, Ireland - which collectively provide some insights into the role that an independent voice can/should play in the costs process. Although civil justice systems across the Common Law world have their own nuances, the issue of concern over legal costs is universal. Consumers everywhere are poorly served in terms of information and transparency about what legal proceedings will cost them. The trend observed in some of the jurisdictions, of regulators taking a more assertive approach in policing costs behaviour, is noteworthy. We found in all of the jurisdictions considered in detail, evidence of the need for specialist costs law expertise. This was usually playing one of two roles – either acting to advise solicitors' firms on compliance with costs rules or acting/advising on independent adjudication on costs by non-judicial court agencies.
- **Part 6 – What this means for regulation?** – A number of themes of regulatory interest emerged from our research which are discussed in detail in Part 6. The evidence from the research suggests that current regulatory arrangements do not support the effective functioning of the legal market in relation to costs. They limit the role that Costs Lawyers can play in making the delivery of justice more efficient, distance them from the end users of legal services and constrain their ability to engage in innovation. These limitations are both statutory and sometimes also arising from the regulatory arrangements currently in place.
- **Part 7 – Recommendations and next steps** – In this section we draw together findings from the evidence gathered to make recommendations which the CLSB, and other stakeholders could take to improve the functioning of the legal costs market. These break down into five broad areas:

- The broadening of the sector-wide debate around legal costs to infuse fresh thinking into how underlying issues around the high level of costs might be tackled.
 - Regulatory actions to strengthen the ability of Costs Lawyers to act as independent costs advisers within the market.
 - Collaborative action with others (e.g. ACL and ACLT) to increase the number of Costs Lawyers in the market.
 - Specific actions to protect consumers
 - Actions to encourage innovation in the efficient and effective control and allocation of legal costs.
- **Part 8 – Conclusions** – The report concludes that the output of this project presents the CLSB, not simply with material to assist in a review of the regulatory arrangement for the profession, but also with a starting point for a much more profound sector-wide debate on how to improve the approach to the entire system of legal costs in England and Wales.

Glossary of Terms

ACL	Association of Costs Lawyers
ACLT	Association of Costs Lawyers Training
ALCD	Association of Law Costs Draftsmen
BEIS	Department for Business Energy and Industrial Strategy
Bill of costs	A detailed statement of a party's costs of litigation prepared (usually by a <u>costs draftsman</u> or <u>costs lawyer</u>) for a <u>detailed assessment</u> .
CFA	Conditional Fee Agreement
CILEx	Chartered Institute of Legal Executives
CLSB	Costs Lawyer Standards Board
Costs	Lawyers' fees and disbursements of the parties
Cost draftsman	Unregulated individual specialist costs advisers whose role is the detailed assessment of costs and the settlement of the legal costs of a court case.
Costs Lawyer	Individuals who are qualified costs lawyers regulated by the CLSB who advise on costs
Costs Law firm	Majority owned, or managed, by a regulated costs lawyer
Inter-partes costs	Costs between opposing parties during litigation
Points of dispute	A written statement made by the <u>paying party</u> in a <u>detailed assessment</u> identifying the areas of disagreement as to the costs to be assessed
Solicitor-Own costs	Fees charged to the client (including disbursements) by a solicitor or other legal professional providing representation
SRA	Solicitors Regulation Authority

Introduction

Objectives of the project

This project was commissioned by the Costs Lawyer Standards Board (CLSB) with funding from the Regulators' Pioneer Fund administered by BEIS.

The project had three principal objectives.

Firstly, to build up a more detailed understanding of the market in which Costs Lawyers work in England and Wales and how the demand for, and supply, of their services is changing.

Secondly, to use this starting point to address the following two questions:

- How might a different legislative, or regulatory set-up, help Costs Lawyers to exert a downward pressure on, or at least help to control, the cost of legal services?
- Does the current shape of regulation and legislation help or hinder the emergence of innovative services provided by advisors specialising in legal costs?

What does Control of Costs mean?

References to “downward pressure on costs” and “costs control” throughout this report are not intended to suggest that the purpose of this project was necessarily to reduce lawyers’ fees in absolute terms, especially in areas like criminal and legal aid work, where legal service providers are already often working on very tight margins. Rather, the purpose of the project was to explore whether there are ways in which Costs Lawyers might contribute to the better control of legal costs, either by eliminating unnecessary costs or helping to allocate spending on legal services more efficiently.

Project Methodology

The findings and recommendations of this project are drawn from three sources: Desk research based on the CLSB register and wider internet research, a survey of Costs Lawyers and cost draftsmen, conducted in January/February 2022. Details of the methodology employed in this project are at **Annex C**. The survey received 91 responses (see **Annex A** for more details) and 16 interviews (see **Annex B**) which included structured conversations with both Costs Lawyers working in different segments of the market and with end clients with experience of using Costs Lawyers.

Part 1 – The Costs Problem

This report has been commissioned against a backdrop of a legal costs landscape that many commentators and stakeholders in the system believe is out of control. Terms such as “Wild West”, tales of shocking behaviour by claimant lawyers effectively gambling away proposed settlements for their clients on litigation and reports of judges pleading to litigation funders for help to bring costs under control, were all part of the evidence that was given to us in the production of this report.

Although the purpose of this study was to look specifically at the market for costs professionals, and Costs Lawyers in particular, this wider backdrop is relevant, even if it highlights a much bigger problem which is beyond the scope of this immediate project.

A Little History

It is therefore worth setting out a little general background, as it gives useful context to the research and conclusions of this report.

Historically the court system in England and Wales has considered costs to be the burden of the losing party (the “Loser Pays” rule). Although, by and large, this remains the case, numerous civil justice reforms, from the Woolf reforms of the mid-1990s to the most recent extensions of the fixed costs regime, have modified and qualified this rule in an attempt to control costs and remove unnecessary complexities in the litigation procedure.

Critics would say that these efforts have had precisely the opposite effect to that intended, and today the costs market is characterised by the following:

- **Ongoing issues around “No win-No fee” agreements:** On 21st September 2008, the then Lord Chancellor delivered a speech which included the following passage:

“I am concerned about another element of legal services – “No win – no fee” arrangements. It’s claimed they have provided greater access to justice, but the behaviour of some lawyers in ramping up their fees in these cases is nothing short of scandalous. So I am going to address this and consider whether to cap more tightly the level of success fees that lawyers can charge”.

What has actually happened since has been an unfolding story in which it is clients, not the lawyers, who sometimes find themselves having to fund a shortfall in damages awarded. Failure to manage costs and communicate effectively with clients appear to be endemic and have been highlighted in recent cases, such as *Belsner v Cam Legal Services Ltd*, which could open the floodgates to challenges of solicitors’ costs in CFA cases.

- **The perceived failure of costs budgeting:** The Jackson Reforms came into force in April 2013 with the aim of changing the litigation process. The implementation of budgets at the initial phase of litigation was seen as the key to effective case management, providing both sides with some clarity on costs and, it was hoped, this would lead to early settlements. Data from the Ministry of Justice, however, tells a very different story, with claims going to trial rising at a faster rate than total claims for the period 2013-19,

suggesting the reverse is happening¹. Moreover, it would appear that budgets are rarely regarded as binding. In the recent case of *ST v ZY* (2022), the judge found where there had been failure to clearly advise the Claimant that *"the budget was being exceeded by a wide margin and that, as a result, those costs might not (and, indeed, almost certainly would not) be recovered from the other side"*, it was not enough to advise the Claimant that *"some costs might not be recovered from the other side"*. This kind of behaviour on both budgeting and communication does not appear to be unusual.

- **The extension of fixed recoverable costs:** The threshold for 'fast track' cases with fixed costs, proposed by Lord Justice Jackson in his 2010 report, may now have been scheduled for an increase, but critics are not convinced of the effectiveness of such thresholds. There is scope to 'game' thresholds (e.g. by arguing the need for more than one expert witness which moves a case out of the fast-track) and so, as our research suggests, an expectation exists amongst insurers and funders that many litigated claims will still fall outside the higher fixed costs threshold.
- **The rise of LiPs:** A rise in Litigants in Person (LiPs) due largely to the removal of access to legal aid, through, inter alia, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). A 2016 Commons Briefing Paper found that there had been an increase in LiPs linked to the 2012 Act, with a 22% rise in cases involving children and a 30% rise across all family courts. A separate report into the experiences and needs of LiPs² found that only a quarter of them appeared without representation as a matter of choice. A further 2019 Post-Implementation Review of LASPO found that while there had been a reduction in cases using the legal aid system, the average case cost had actually increased in Crown Courts since 2012.

The common thread which runs through all of these developments is the extremely wide variability in lawyers' fees (exorbitant legal fees at one end of the spectrum and headline remuneration at the other, which is pricing legal advice out of the market for legal aid). Action undertaken through civil justice reforms to control costs, is often just a sticking plaster applied after the fact, given the wider dynamic around fees.

Lawyers' fees are never going to be popular, but remuneration at the same time, has to be fair and under control. For this to be the case, clients need to understand better what they are paying for and lawyers need to move away from the traditional hourly billing model towards a fixed-price model that aligns their incentives more closely with their clients. This is where costs professionals have a role to play.

This project has therefore aimed to understand how costs professionals, and regulated Costs Lawyers in particular, influence the control of costs in legal services. More importantly, it also aims to examine whether they could play a bigger role in helping to control legal costs, and if not, what might be preventing that from happening.

¹ Source: <https://www.gov.uk/government/collections/civil-justice-statistics-quarterly>

² <https://www.judiciary.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf> or <http://www.lawforlife.org.uk/wp-content/uploads/Meeting-the-information-needs-of-litigants-in-person.pdf>

Part 2 – What is the Costs Lawyer profession?

A Short History of the Costs Lawyer Profession

As a Common Law jurisdiction in which the Law of Costs³ applies, it is perhaps not surprising that in the course of the 19th and 20th centuries a group of dedicated professionals has emerged in England and Wales to advise on matters specifically relating to legal costs (hereafter referred to in shorthand purely as “costs”) and their allocation between parties to litigation. These individuals initially became known by the informal title of ‘costs draftsmen’.

In due course, and in common with the historical development of other branches of the legal profession, this group became more formalised in the latter half of the 20th century. The Association of Law Costs Draftsmen (ALCD) was founded in 1977 with the object of promoting the status and interests of the costs draftsmen profession and ensuring high professional standards. It was subsequently designated as an authorised body under the Courts and Legal Services Act 1990, by the Association of Law Costs Draftsmen Order 2006 (SI 2006/3333) which came into effect on 1 January 2007. This enabled ALCD to set standards, train and qualify its members to obtain the right of audience and the right to conduct litigation. This enabled ALCD to differentiate its members from other costs draftsmen.

When the Legal Services Act 2007 (“LSA 2007”) came into force in 2008, ALCD became an approved regulator under the Act and changed its name to the Association of Costs Lawyers (ACL). The Costs Lawyer Standards Board (CLSB) was then established to enable ACL to separate its representative role from its regulatory role in accordance with Part 4 of the Legal Services Act. Since 31 October 2011, the CLSB has undertaken the role of approved regulator of the Costs Lawyers profession under delegated authority from ACL, in accordance with its role as an approved regulator under the LSA 2007.

What do Costs Lawyers do?

This brief history of the profession is relevant because it has shaped what Costs Lawyers do today and, as importantly, how they themselves define their role in the wider legal market. It has left Costs Lawyers in the following position:

- Cost Lawyers have the right under the LSA 2007 to carry out certain reserved activities, namely
 - the exercise of a right of audience (but limited to cost proceedings)⁴;
 - the conduct of litigation; and
 - the administration of oaths

³ The Law of Costs defines the basis on which the costs incurred by claimants and defendants in litigation are allocated between them.

⁴ See section in Costs Lawyer Handbook on Authorised Rights of a Costs Lawyer.

- But the title of ‘Costs Lawyer’ is not protected by legislation as those of ‘solicitor’ and ‘barrister’

This means that Costs Lawyers play a largely niche role in the legal sector, providing services in relation to a variety of issues relating to legal costs but without any exclusive rights in relation to any of the services they provide.

The CLSB defines⁵ a matter related to costs as the following:

- “Own solicitor costs”, or the fees charged to a client (including disbursements) by a solicitor or other legal professional providing representation to that client to the extent that this does not concern negligence;
- “Inter-partes costs”, or the costs between opposing parties including costs management and budgeting.
- Legal aid, criminal costs, wasted costs or costs against third parties

As these are the activities that are associated with their regulated status, not surprisingly, this is how most Costs Lawyers define what they do, and what they spend most of their time doing (see Table 1).

Table 1: How do Costs Lawyers and Cost Draftsmen spend their time?

	Cost Lawyers	Cost Draftsmen
Drafting bills of costs	75%	93%
Costs budgeting	58%	60%
Drafting points of dispute	48%	47%
Delivering Training	22%	47%
Solicitor-Own client costs disputes	19%	33%
Court Representation	19%	20%
Legal Project Management	32%	0%
Auditing & valuation	44%	0%
Pricing	32%	0%

Source: Hook Tangaza Survey of the Costs Market, 2021

Table 1 illustrates the responses to the survey on the question of how respondents spent their time. Whilst it is a snapshot in time of what costs draftsmen and Costs Lawyers said they spent most of their time doing (from a list of the most commonly listed activities appearing on firms’ websites), it does appear to show that there is a great deal of similarity in the traditional services provided by both. This was a point also corroborated by interviewees. This may be attributable to exemptions to authorisation found in section 13(2)(b) of the LSA. The exemptions are different for

⁵ [CLSB Code of Conduct - Authorised Rights](#)

each reserved legal activity, as set out in Schedule 3 to the LSA. In relation to a right of audience, the exemptions include being instructed and supervised by an authorised person.

There are restrictions on this exemption, particularly in relation to the type of court before which you can appear. Just being employed by an authorised firm does not make one exempt.

The key issue which distinguishes a regulated Costs Lawyer from an unregulated costs draftsman is the training which they undergo to qualify for a practising certificate and their ongoing regulation by the CLSB.

Regulation by the CLSB

Qualifying as a Costs Lawyer currently requires completion of the Costs Lawyer qualification, a modular, part-time three-year course of academic study, together with three years of Qualifying Experience. Applicants who have a law degree or other legal qualification can obtain exemptions from parts of the course and supervised practice can be carried out before, during or after studying for the Costs Lawyer Qualification.

Once qualified, a Costs Lawyer is subject to ongoing regulation by the CLSB which encompasses the following obligations:

- To obtain an annual practising certificate
- To carry professional indemnity insurance to minimum value of £100,000 per claim (either as an individual or through cover provided by their employer/organisation)
- To complete 12 hours of continuing professional development (CPD) per practising year
- To comply with the Costs Lawyer Handbook which sets out the Code of Conduct for Costs Lawyers (covering matters including acting in the best interests of the client, client confidentiality and providing a good quality service), practising rules, CPD rules and disciplinary rules.

These rules differentiate Costs Lawyers from costs draftsmen, and if they work as they are expected to, they should allow Costs Lawyers to offer value added to their clients.

A critical question for this study is therefore whether this is in fact what is happening and if not, why not?

Part 3 – Who are Costs Lawyers?

How the Costs Lawyer profession compares to the wider legal market

The Costs Lawyer profession represents only a tiny proportion of the legal profession in England and Wales. As of November 2021, there were 697 regulated Costs Lawyers on the CLSB register. This compares to 156,122 practising solicitors, 16,435 practising barristers and around 20,000 CILEx lawyers, legal executives and other regulated legal professionals.

Costs Lawyers therefore account for less than 0.5% of all authorised legal professionals.

When the number of unregulated costs draftsmen are taken into account, the visibility of Costs Lawyers as a distinct profession within the market is even lower. There is no official figure for the number of individuals working as costs draftsmen but ACL has previously estimated their number to be around 5,000⁶. This may not be wildly inaccurate given that there are 2,700 individuals in England and Wales on LinkedIn describing themselves as law costs consultants and 1,600 describing themselves as law costs draftsmen⁷. In addition to costs draftsmen there are solicitors and barristers specialising in costs, who may provide services that overlap with those provided by Costs Lawyers.

Regulated Costs Lawyers therefore may account for little more than one-sixth (around 17.5%) of the costs law market, defined by the number of market participants acting as specialised costs professionals.

Where do they work?

Costs Lawyers are regulated as individuals and there are no restrictions on where they can work or by whom they can be employed. Before the entry into force of the Legal Services Act, much of the legal costs sector was, according to anecdotal accounts⁸, largely based on self-employed costs draftsmen (“kitchen table costs draftsmen”) working freelance for solicitors’ firms. There were, however, a few established firms specialising in legal costs, run by members of ALCD, who chose, upon the creation of the CLSB to put some, or all, of their individual costs draftsmen through the transfer process to become Costs Lawyers.

These firms of Costs Lawyers are referred to in the remainder of this report as ‘Costs Law firms’. This is not a formal regulatory status but is a useful market distinction between groupings of Costs Lawyers and groupings of costs draftsmen. The definition which is adopted for the purpose of this report is that a Costs Law firm is majority owned, or managed, by a regulated Costs Lawyer.

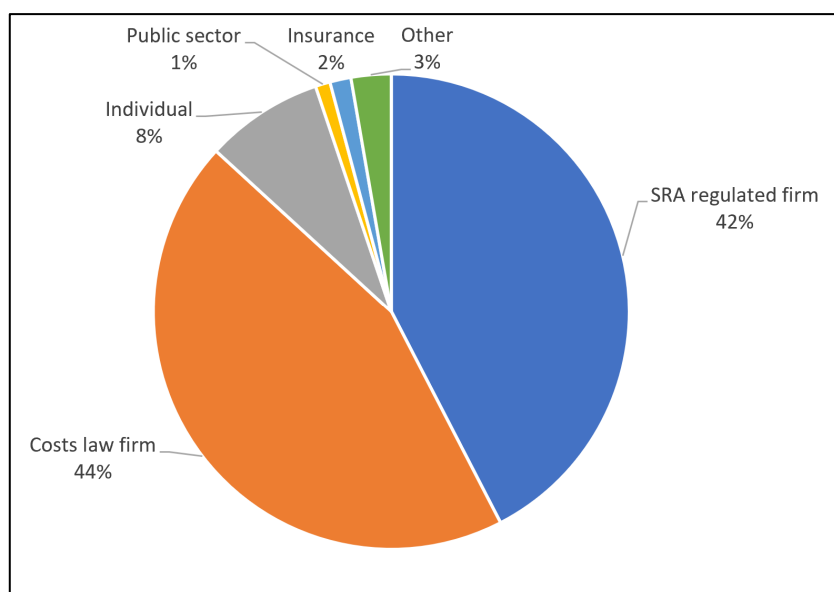
⁶ Costs Lawyer Journal February 2021 reported in <https://www.gwslaw.co.uk/2011/02/how-many-law-costs-draftsmen-are-there/>

⁷ Although there is some overlap between these categories

⁸ Supported by evidence from the CLSB register

In 2021⁹ Costs Lawyers were working in the different types of organisations shown in figure 1¹⁰.

Figure 1: Where Costs Lawyers Work by Organisation Type, 2021



Source: CLSB register 2021

Figure 1 shows that the vast majority of Costs Lawyers (86%) are now working either in Costs Law firms or in solicitors' firms. Significantly, the number working in solicitors' firms is almost the same as the number working in Costs Law firms. This is important because it reduces the number of Costs Lawyers who are available to act independently for clients directly from its already low starting point. This diagram does, however, also show that there may be an interest from other types of employers (e.g. technology firms) in the skills that Costs Lawyers can offer, even if these are not always directly related to legal costs.

Figure 2 below offers further insight, as it shows where Costs Lawyers are currently working, based on their year of qualification. Although evidence from the 2021 register suggests that Costs Lawyers do not always remain with their first employer and often move fluidly between modes of employment, this is nonetheless a reasonable indication of how recruitment patterns have changed over the past 15 years.

Figure 2 shows the distribution of individual Costs Lawyers across different places of employment. It indicates that apart from the initial 2007 cohort, the distribution of employment has remained fairly evenly split between Costs Law firms and solicitors' firms, with the exception of the cohort who qualified in 2010-11 who were more likely to be employed in solicitors' firms. This expansion by solicitors' firms into costs law reflects the fact that around 2010 insurers were increasing their demands on the legal market to address rising costs more effectively, in anticipation of the Jackson Reforms¹¹.

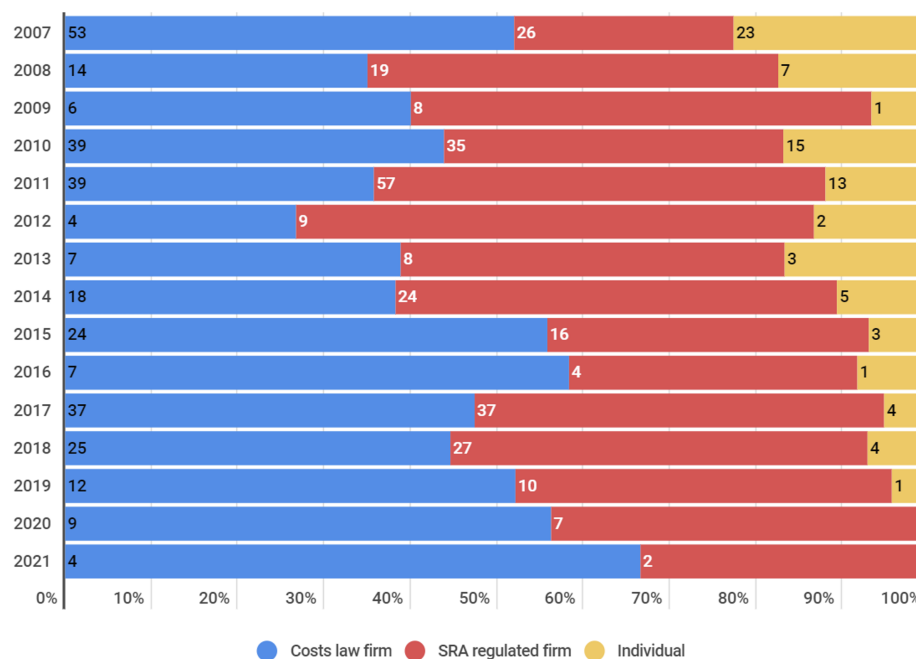
⁹ This reflects the CLSB register for the 2020-21 Practising Certificate year, valid until 31st December 2021

¹⁰ The precise number is difficult to find as the entities in which some Costs Lawyers are working are unclear

¹¹ Lord Justice Jackson's report available at <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf>

Many solicitors' firms specialising in insurance did so, according to interviewees contributing to this study, by incorporating Costs Lawyers, Costs Law firms and costs draftsmen into the services they were able to offer.

Figure 2: Where Costs Lawyers work by type of organisation and year of qualification



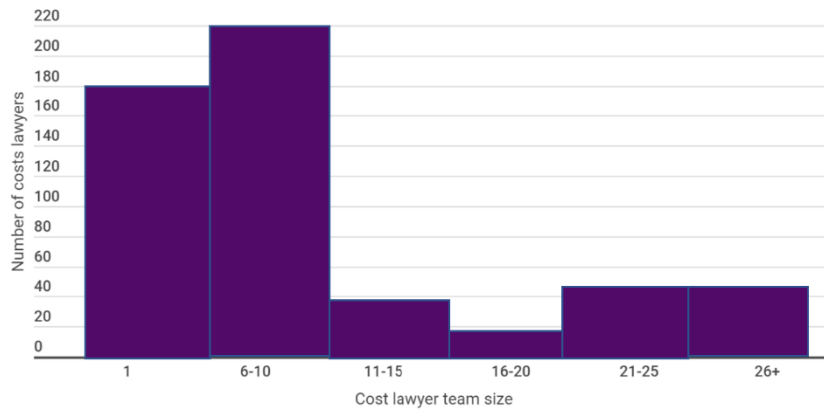
(Source: CLSB Register and own research – n.b. Numbers in the bars refer to the number of individuals in those years of first admission, holding practising certificates in 2021)

The number of Costs Lawyers choosing to practise as individual practitioners has continued to decline over time.

A further relevant consideration is the relative size of the organisations in which Costs Lawyers work and the number of other Costs Lawyers they work alongside. This gives an indication of the concentration of regulated costs law work within the market and the relative size of Costs Law firms when compared to groups of costs lawyers working within solicitors' firms.

Figure 3 below shows that even when Costs Lawyers work in firms, these tend to be small, with 6-10 being the most common size of team. It is worth noting that the largest Costs Lawyer grouping represents the costs team in just one law firm, Irwin Mitchell.

Figure 3: Distribution of Costs Lawyers in solicitors' and Costs Law firms



(Source: CLSB data and Hook Tangaza research)

Sectors and areas of law in which Costs Lawyers work

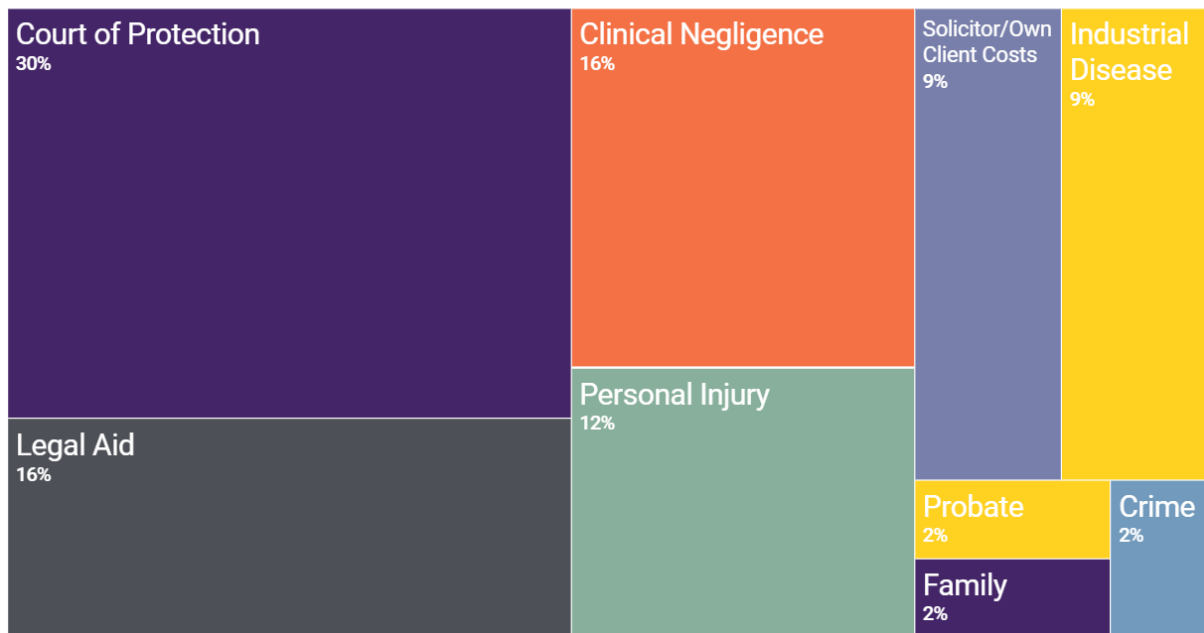
Although the services that Costs Lawyers provide are all based around the Law of Costs and related activity, a review of 309 Costs Law firm websites and responses to the survey, shows that many firms have chosen to specialise in costs matters relating to cases in specific areas of law or sectors. Figure 4 below highlights some of the specialist areas of services costs lawyers provide to business and individual clients garnered from the websites and other social media channels of approximately 90 Costs Law firms and individual Costs Lawyers working as sole practitioners.

Figure 4: Areas in which Costs Lawyers specialise

Existing costs law expertise for business clients



Existing costs law expertise for individual clients



(Source: Hook Tangaza research)

This illustrates two important characteristics about the work of Costs Lawyers, which were further underlined in the interviews conducted for this study.

First, costs work is becoming more specialised and this is being reflected in how Costs Lawyers market themselves. The extent to which Costs Law firms are developing more specialist interests or sector knowledge within the broad field of costs law is reflective of greater specialisation in solicitors' firms, the growing complexity of the law and variation in costs recovery rules.

Second, Costs Law firms, overall, tend to be more focused on attracting commercial work. This is largely because the majority of personal injury work is now dealt with by Costs Lawyers working in-house within solicitors' firms. But also reflects the fact that, according to our interviewees, commercial cases are becoming bigger and more complex (although also reducing in number which has other consequences for the market).

There are therefore only a small number of Costs Law firms choosing to specialise in areas of individual law interest¹², not least given the prevalence of fixed costs in many of these areas. Court of Protection work is the exception and has been a significant growth area in recent years. Nonetheless, even in seemingly unpromising areas of practice there are Costs Law firms that have developed profit-making specialisations, whether in legal aid or criminal work.

¹² Although many Costs Law firms offer specialist services in areas of law concerning individuals, the evidence gathered by this report suggests that their actual clients are very rarely individual consumers

Who are the clients of Costs Lawyers?

The vast majority of Costs Lawyers who are not employed in solicitors' firms work for professional clients, either under instruction by solicitors' firms or sometimes barristers' chambers, rather than providing services directly to end-clients. This was borne out in the evidence gathered both in interviews and by the survey, in which 73% of respondents most frequently described their 'client' as an instructing solicitor.

There is little on offer from Costs Lawyers that is explicitly consumer facing. Less than one fifth of Costs Law firms advertise services directly to individuals or Litigants in Person (LiPs). In the latter case, further investigation suggests that this most frequently takes the form of advice about how to reduce a bill but without taking on the representation of that individual.

This seems to reflect the wider costs law market where there are few obviously consumer facing services on offer. Our survey and interviews suggest, however that there is an expectation in the market that this might be about to change with the expansion of the fixed costs regime and growing uncertainty about what additional charges claimants might face, even under 'No Win No Fee' arrangements. The lack of good communication by solicitors in relation to the charges their clients might face in undertaking litigation, despite efforts by the SRA to promote price transparency, was highlighted to us by market participants. Many of our interviewees expected significant growth in Solicitor-Owned costs actions under Section 74 of the Solicitors Act, as a result.

But the expectation in the costs law market is also that the majority of services that might be offered in response to these growing client needs, are likely to come from solicitors' firms, or consumer facing services such as [Check My Legal Fees](#)^{13 14}, rather than directly from Costs Law firms. There were concerns voiced by some of the Costs Law firms interviewed for this study, of the potential risks of serving the end consumer market directly. One of our Costs Lawyer interviewees cited significant financial losses they incurred as a result of an action started by a lay client but discontinued after considerable work had been undertaken. The inability of Costs Lawyers to hold money on account from clients¹⁵ was cited as a factor that could have a chilling effect on the development of a Costs Law firm service to such clients. But it also needs to be acknowledged that costs professionals, whether Costs Lawyers or costs draftsmen tend also to be technical experts who are not necessarily best positioned to communicate with consumers about the process and implications of an own solicitor claim. The general consensus view from Costs Law firms was that they would not want to deal with lay clients directly and those who had, were not keen to do so regularly. The impression given by interviewees was that such clients were both demanding and time consuming to deal with.

Moreover, it was also pointed out by a number of our interviewees that most consumers are unlikely to want to pay fees to Costs Lawyers to challenge their solicitors' bills. Whilst this might be feasible if organised on a commoditised basis by an online service like Check My Legal Fees, it was not realistic for small-scale Costs Law firms who mostly rely on higher value commercial costs work.

Overall, therefore, the reluctance of Costs Law firms to engage wholesale in Solicitor-Owned Client cost actions directly with lay clients appears to be due to a combination of business model, scale

¹³ A service established by a qualified Costs Lawyer but regulated by the SRA

¹⁴ See also [Solicitors negligence and complaints against negligent Solicitors \(complaintaboutsolicitors.co.uk\); How to Challenge a Solicitor's Bill and Reduce Their Fees - ARC Costs](#)

¹⁵ Principle 3.6 of Costs Lawyer Code of Conduct available at [Costs Lawyer Code of Conduct](#)

and skillsets. At the same time, there is a concern amongst Costs Lawyers that growing claims of this nature may well end up being handled by providers to whom no ethical rules or client protections apply. The risk is then that the latter encourage consumers to sue their solicitors, at potentially greater risk to themselves than they are led to believe.

Against this background, the apparent growth¹⁶ in Costs Lawyers seeking further training on Solicitor-Own Client cost actions is noteworthy but not necessarily indicative of any intention among Costs Lawyers to deal more frequently with consumer clients.

¹⁶ Indicated in CPD records provided by a sample of Costs Lawyers under the 2022 CPD audit

Part 4 – What impact do Costs Lawyers have?

Although, as the previous section of this report indicates, the size of the Costs Lawyer profession overall is small in comparison to the wider legal market, it is nonetheless interesting to consider whether there is any evidence to suggest that individual Costs Lawyers and Costs Law firms can have an impact on legal costs in individual cases.

Evidence of impact

All of the Costs Lawyers we interviewed believed that they had an impact on costs rather than just moving costs between parties. This view was supported in our wider market survey which included Costs Lawyers and costs draftsmen, in which 88% of those responding said that they believed that it was part of their role to impact overall legal costs and not just to redistribute costs away from their clients. And there was evidence in the market to suggest that this does happen¹⁷.

However, larger clients were more sceptical – a litigation funder opined in interview that costs never came in on budget and budgets were often wildly underestimated. Nonetheless, the same interviewee believed that Costs Lawyers could have more of an impact if they could be instructed directly by case funders and used as independent advisers on costs within a case. This potential role for Costs Lawyers was also suggested by a specialist professional negligence insurer, who likened it to a need for an independent financial adviser to be used for pension advice. The same insurer referenced an 81% repudiation rate for the claims they dealt with from solicitors, and like the litigation funder, was desperate for claims to be presented “honestly, based on evidence”. The message from both was that, in their view, solicitors’ firms were often presenting wildly inflated claims based on their interests in a CFA and this was not always acting in the best interests of the client. The other message from the client end was that the earlier that Costs Lawyers could be involved, the more likely there were to have a positive impact. This latter view was also echoed by a number of Costs Lawyers in their survey responses.

Although evidence of the impact on legal costs by Costs Lawyers was mixed, there were much more definitive views of the impact that Costs Lawyers could have on the pricing of solicitors’ fees. Our interviewees gave us various examples of where instructions from end clients (corporates, local authorities or trades union) to review panel fees, for example, resulted in major savings for clients (in the millions of pounds). Although bigger clients are increasingly using procurement professionals when they tender for their panels of advisers, the expertise that could be provided by Costs Lawyers into this process on litigation budgets, or at a later stage for panel reviews, is something that the wider legal market should be made aware of.

Similarly, there was evidence in the market of other Costs Lawyer services on offer with the potential to impact on fees. One Costs Law firm interviewed had carved out a specialist niche in the market in training law firms on legal pricing techniques. The claim made for these kinds of services is that they improve solicitor-client communication on pricing and reduce client complaints whilst at the same time increasing the long-term value of a client to the solicitor in question. They have proved effective in other jurisdictions, including the US and New Zealand where they are apparently more commonly used.

Costs Lawyers have also been used to good effect by law firms and other investors, seeking to take over or merge with other practices. The tendency of law firms to overestimate the value of

¹⁷ [Reduce my legal costs - www.Costings.co.uk](http://www.Costings.co.uk)

their work in progress (WIP) is well known and has, over the years, been the downfall of large firms absorbing other well-known firms in the market¹⁸. Again, although Costs Law firms could see the need for such services, most tended not to promote their availability although new entities are now looking to fill this need. There are, for example, services emerging such as [ZebraLC](#), which combines multi-disciplinary expertise from the legal and accounting sectors and advises on matters such as law firm valuation. Anecdotally, we were informed that ZebraLC uses Costs Lawyers to deliver some of its services but does not employ any directly.

Innovation

The general picture that has emerged from our research on Costs Law firms, interviews and survey of costs professionals, is of a market characterised largely by providers offering very similar looking services, punctuated by small pockets of innovation. Although some of this is led by Costs Lawyers, the (very little) innovation that is focusing on consumer needs is coming from outside regulated firms and individuals, to the extent that it is evident at all.

Whilst there is little evidence of innovation as such, there is nonetheless evidence of some interesting developments worth noting:

A couple of our interviewees expressed the intention to expand their services internationally, particularly into offshore financial centres where there was a potential demand for costs services but no local provision. The greater interest of US law firms in London in using Costs Law firms' services at an earlier stage than their English counterparts, was mentioned by more than one interviewee.

There is a growing view that the work costs professionals carry out is becoming more complex and specialised in the face of changes in the market, often in conjunction with an increase in higher value work.

However, one firm in particular stood out for its willingness to invest a six-figure sum in developing its own in-house online training and case management system for managing costs matters relating to legal aid¹⁹. This has enabled the firm to operate low cost, profitable service for legal aid solicitors' firms. However, this was based on a commoditised model which used paralegals selected through a rigorous recruitment process for their accuracy and facility with numbers, who were then trained as specialist costs draftsmen and expected to meet a case load target. Although this service was run by Costs Lawyers few of those carrying out the costs work within the firm were qualified and regulated by the CLSB.

The Big Picture Problem

"The sector also needs to consider solutions that could make legal services available more affordably at the point of need or help consumers to manage the cost. For example, legal needs are often unexpected, and few consumers meet the costs from disposable income.

Yet few providers enable consumers to pay by instalments or use credit, which would help them manage these payments. Legal expenses insurance is rarely used to pay for legal services, even though millions of households have policies.

Unbundled legal services (where consumers and lawyers share the work) have not become as widespread as expected. These are avenues that could potentially contribute to reducing financial barriers to access"

Extract from LSB Strategy [Reshaping Legal Services](#) (legalservicesboard.org.uk)

¹⁸ [Cobbetts collapse: eight to face tribunal over alleged incompetence | News | Law Gazette](#)

¹⁹ See information on interviews provided separately to CLSB

Nearly a quarter of our survey respondents mentioned that they offered or planned to offer costs mediation services in future. But the market for these services does not yet appear to have taken-off in any significant way, according to the Costs Lawyers we interviewed. A greater role for costs mediation in the costs dispute process does make sense but seems unlikely to happen without some degree of recognition by the court. This mirrors what is happening in mediation more generally with court ordered mediation really being required before take-up by parties occurs to any significant degree.

There was perhaps more evidence in our investigations, of an interest from Costs Lawyers in innovating in upstream services.

Thirty two percent of our survey respondents said they had started providing Legal Project Management services. A similar proportion were already or were planning to offer legal pricing services and just over a quarter offered services to help solicitors to obtain funding for running cases. However, by far the most popular activity outside traditional costs work is auditing and valuation work undertaken by 44% of respondents.

“We have particular skills and expertise that is much needed in the legal sector and not provided by any others. What they have in North America with pricing specialists are services that costs lawyers can absolutely provide to in-house teams, to firms, to businesses etc” – Costs lawyer in a costs law firm

There was no evidence of any ground-breaking use of technology in the costs market, but widespread use of costs software²⁰. Although the market leading software, CostsMaster, is marketed at both costs professionals and solicitors, this has not led to a disintermediation of costs specialists by solicitors, in the view of the Costs Lawyers at least. According to our interviewees, solicitors were not interested in cost issues as a rule and happy to delegate the mechanics of bills of costs and budgets to cost professionals or other numerate employees within, or outside, their firms.

This reflected a view put to us by more than one interviewee of the lack of interest from solicitors' firms in the innovations that Costs Lawyers might be able to offer. Given that solicitors are overwhelmingly the main client for Costs Lawyers, if they are not interested in buying into any new services then there is less incentive for Costs Lawyers to develop such services.

Why Is the impact Of Costs Lawyers not more significant?

Our research suggested a number of reasons why Costs Lawyers are not having a bigger impact in the market, despite the evidence of their potential so to do.

First and foremost, the number of Cost Lawyers is extremely small, as previously noted, with the equivalent of around 1 Costs Lawyer available for every 15 solicitors' firms. There appears to be little familiarity with what such professionals do or how they could be deployed usefully by solicitors especially, on all manner of pricing and costs estimation activity.

Second, there is strong sense amongst Costs Lawyers and other costs professionals that they represent an intermediate profession which serves other legal professionals, especially solicitors. Given the lack of interest from solicitors in buying innovative services from Costs Lawyers, or the need for them to do so, there is little pressure on Costs Lawyers to innovate, despite perennial

²⁰ <https://www.costsmaster.co.uk/>

warnings about the demise of all costs work in the face of fixed costs. As one interviewee opined: *“The CPR may change but there will always be a route to costs work”* (Costs Lawyer in Costs Law firm). This has important implications for how Costs Lawyers see their role.

There is always a risk with a profession which relies heavily on instruction from another, as Costs Lawyers do on solicitors, that a conflict of interest is created if the former is being asked to reduce the costs recovered by the latter. This, no doubt, contributes to the preference of Costs Lawyers to act earlier on matters, as highlighted by survey respondents, since this reduces conflict risk. It is also why some of our client interviewees valued an independent Costs Law firm, over a Costs Lawyer embedded in a solicitor’s firm. But to some extent the insurance industry has driven the risk of conflict arising, especially in personal injury, through an aggressive downward pressure on costs, which has resulted in solicitors’ firms taking over Costs Law firms or using the services of an independent Costs Law firm at a much later stage in the process.

A third reason for the lack of impact of Costs Lawyers on legal costs overall, is due to the very low level of awareness in the market of the fact that Costs Lawyers are regulated and what that means in practice. Even solicitors and clients active in the legal costs market tended to use the terms “Costs Lawyer” and “costs draftsman” interchangeably. Furthermore, there was little evidence that Costs Law firms themselves actually emphasised any difference between their services and those provided by costs draftsmen in their marketing. Nonetheless, there is an enduring resentment in some quarters of the sector that some Costs Lawyers (and most particularly the Association of Costs Lawyers in the past) have attempted to suggest that costs draftsmen are of lower quality or less ethical than their regulated counterparts²¹. None of our Costs Lawyer interviewees said that this was the case and were mostly reluctant to suggest that there was any real difference in practice between Costs Lawyers and costs draftsmen, since the latter could act as agents of solicitors and do pretty much the same things as Costs Lawyers.

The origin of the Costs Lawyer profession as a group who had formed a self-governing institute within a wider profession was evident in attitudes to regulation. None of those we spoke to appeared to think about the regulation of legal services as it is traditionally defined by regulators or in the Legal Services Act and all of the arguments and proposals we heard from the profession itself related more to branding issues than questions of public interest justification. Although views such as that quoted below might offer some regulatory rationale, this was then somewhat undermined by the fact that all of our interlocutors confirmed that clients²² do not distinguish between Costs Lawyers and costs draftsmen in selecting who to use but tend to work on the basis of who they know and have used satisfactorily in the past.

“Regulation gives security and confidence to clients that work is being undertaken (or overseen) by trusted parties.” – survey respondent.

Fourth, a key distinguishing feature between Costs Lawyers and other costs professionals was perceived to be largely the Costs Lawyers training course offered through the Association of Costs Lawyers Training arm (ACLT). Views of the course were mixed. On the one hand, we heard from some that the course helped Costs Lawyers add value because it gave them context and helped them to understand the legal sector better and the bigger picture of the litigation in which they were involved. This was particularly true of those who had come to the course through on-the-job training in the sector, without any formal training in the law.

²¹ <https://www.gwslaw.co.uk/2013/08/costs-lawyers-v-law-costs-draftsmen/>

²² Predominantly solicitor clients with some corporate or other direct access

On the other hand, we heard from others that the course was less useful for those who had already studied law in a formal setting. Their needs are for much more practical material and a reflection of the real-world dynamic which underlies cost budgeting and costs negotiations. Others also felt that it did not reflect the specialist knowledge of the different areas in which Costs Lawyers are increasingly working and specialising.

Overall, in its current form, the Costs course does not help Costs Lawyers to reflect on the core skillset they possess and to reflect on how those might be deployed to support innovation in the market.

Lastly, the Costs Lawyer profession appears to be suffering from a syndrome of “overidentification” observable especially in smaller professions. This happens when members of a smaller profession regard the regulated activities that they are permitted to undertake by virtue of regulation, as marking the boundaries of what they do, rather than a starting point. This, coupled with the fact that, despite fixed costs, Costs Lawyers do not (overall) appear to be short of work, reduces the interest and incentive to innovate. That said, for a few of the more ambitious Costs Lawyers we spoke to, having regulated status was seen as something that could help to build greater confidence from clients in new products and services.

Part 5 – Lessons from Elsewhere

Introduction

Before considering what could be done in England and Wales to increase the impact that Costs Lawyers might have, it is worth considering how other jurisdictions are handling costs issues and whether they have professionals playing a similar role to Costs Lawyers.

Following a wider review, the following four jurisdictional summaries are included here because collectively they provide some insights into the role that an independent voice can/should play in the costs process.

Australia

In Australia, costs are heavily regulated. In the Uniform Law States²³, solicitors are governed by Section 174 of the Uniform Law which sets out the disclosure obligations of a law practice in both contentious and non-contentious matters and section 179 gives the client the right to have a negotiated costs agreement in place.

Guidance from the Law Society of New South Wales makes it clear, for example, that if a law firm intends to charge a client for any services or other items beyond disbursements, these must be specified in the agreement. Without such an agreement, fees will not be recoverable from the clients. This creates a discipline around costs – not just around initial quotations but also around material changes which will affect the eventual bill – which helps to reduce the likelihood of complaints around Own Solicitor costs.

If there are disputes between clients and their lawyers or a disagreement on inter-partes costs to be paid, either the client or their law practice can apply for costs assessment. This is an administrative process adjunct to the Court. The costs assessor has the power to waive fees if they have been unreasonably incurred and refer a matter to the regulatory authority if there is evidence of unsatisfactory professional conduct. The assessment can be challenged but there are inbuilt disincentives to doing so.

The emphasis on costs as part of a lawyer's ethical duties is taught as a compulsory part of the Practical Legal Training that all lawyer's must complete before they qualify and, more significantly, this is taught as part of the ethics and professional responsibility course (see for example [College of Law Australia - PLT Curriculum](#)). Guidance for practising lawyers from their different state regulators is often detailed (see e.g. [Costs disclosure - Victorian Legal Services Board + Commissioner](#)) and it is possible in Victoria for a legal practitioner to become an accredited legal costs lawyer. To join this accreditation scheme a legal practitioner must spend at least 25% of their practising time on this area of law, pass an examination, submit to reaccreditation every 3 years and carry out 8 hours of CPD in this area annually.

There is an expert costs consultant profession in Australia, which looks similar to the costs profession in England and Wales in terms of services offered. It is, however, entirely unregulated

²³ New South Wales, Victoria and from 2022, Western Australia

and appears to work almost exclusively for law practices, helping them in preparation for costs assessment and with other matters relating to costs.

There is little evidence that costs agreements are impacting on “before the event” behaviour by some lawyers (see e.g. '[Obscenely high. How family court costs are destroying parents and their children](#)') but they do create greater clarity for clients who wish to challenge their lawyer’s fees or an inter-partes costs bill. The role of Costs Lawyer equivalents in this process as a mechanism to control costs is limited but the independent costs assessor role adds teeth to a pre-costs litigation process.

Information and advice websites generally refer Australian consumers to the relevant State Regulator or to the Court assessor directly. The state regulators (see the Victorian Legal Services Board, for example²⁴) offer a lot of detail to the general public about legal costs, how to dispute a solicitor’s bill and the process of escalation which can eventually lead to costs litigation.

Canada

Canada applies the cost-shifting principle, although there are differences between provinces. In effect, there are three models:

- In Quebec, there is a fixed tariff of recoverable costs and fees which has been infrequently revised, keeping recoverable costs very low. This removes much of the down-side risk of litigation and is closer in effect to the US model in which parties are responsible for their own costs.
- In the Common Law provinces, other than Ontario, a tariff of costs or fees is applied, as in Quebec although at more like prevailing market rates. Costs orders by the court are assessed by the Taxing Master or a taxing officer, acting as an independent assessor.
- The final model is that of Ontario where the presiding judge rules on costs, generally after submissions by the parties on the complexity of the case, time actually spent, hourly rates and other factors. The assessment may be made on a ‘partial indemnity’, ‘substantial indemnity’ or ‘full indemnity’ basis, demanding different levels of justification for costs incurred. A global amount will be fixed, though a judge may also order a ‘line-by-line’ assessment to be undertaken by a taxing officer.

In relation to Lawyer-Owned Client costs matters, clients may ask a court officer (Taxation Officer) to review their lawyer’s bill for reasonableness and, if appropriate, reduce the amount of fees payable. This review has to take place within six months (12 months in British Columbia, 1 month in Ontario) of receiving the lawyer’s bill for legal services. The client has to pay a small fee to lodge a request for assessment by the taxation office. If they are unhappy with the outcome, they, or the lawyer, can then ask for a Judge to review the decision of the Taxation Officer. In Quebec there is no procedure for taxation of fees by a court officer but the Quebec Bar offers an arbitration programme under which fee disputes may be resolved by arbitration.

There is no evidence in any of this process of the presence, or availability of a profession like a Costs Lawyer or a legal costs consultant.

²⁴ [Legal costs and billing | VLSBC](#)

There are some online lawyer selection services available in the Canadian market, who refer to the possibility of challenging a legal bill (e.g. <https://canlaw.com/complain/lawyers-bill-too-high.html>) but who offer little information in practice about how to do this. In general, consumers are advised to approach the Court Taxation Office.

Northern Ireland

In Northern Ireland, there is no equivalent of cost budgeting/cost capping/costs management as part of case management. Costs are not managed in advance and the only control is the possibility for the “taxation of costs” at the conclusion of the case. However, there is a high degree of control exerted on solicitors’ and barristers’ fees which acts to keep costs under control to a large extent. The remuneration of solicitors and barristers is fixed for County Court matters with ceilings on fees that can be levied on cases at certain threshold valuations. At the High Court there are two non-statutory scales that give a greater degree of certainty to clients about potential fees, an insurers’ scale at one end and the Belfast Solicitors’ Association (BSA) scale at the other. These fee scales are purely for guidance but indicate that fees in Northern Ireland tend to relate proportionately to the value of the case.

In theory, therefore, costs disputes between solicitors and their own clients at least should be lower because, as the judge in the case *Re C & H Jefferson (a firm)* [1996] NI 404 opined:

“When the scales are applied there is no element of discretion and taxation of costs and fees is not required...If the scales are fixed at a suitable level, proceedings in the county court can be conducted at reasonable cost, while giving a reasonable return to the practitioners who conduct them”.

The Law Society of Northern Ireland has frequently queried whether scales are fixed at a suitable level, but that is a different question.

Nonetheless, if clients wish to challenge their legal costs they have a number of options:

- Fees charged on non-contentious matters can be checked by the Law Society. Clients have a statutory right to ask their solicitors to obtain a remuneration certificate from the Law Society which states whether charges levied were fair and reasonable. This is a free service and where the client is not satisfied with the outcome, they can ask for a formal ‘taxation’ assessment by the Taxing Master.
- Costs (inter-partes or Solicitor-Own Client costs) can be challenged at hearings with the Taxing Master. Both parties have the right to be represented by either a solicitor or a costs drawer.

Cost drawers are specialist advisers on legal bills and the costing of legal services. They advertise their services almost exclusively to solicitors. They are not regulated as Court Taxation hearings are not court proceedings. There appears to be only a small number of Costs Drawers in Northern Ireland, based on the list published by the Law Society of Northern Ireland and most of these also appear to be working on their own, outside of any formal corporate structure.

The Taxing Master clearly has an impact on costs. The Justice Committee of the NI Assembly reported that legal costs in Legal Aid cases had been reduced in the period 2013-16 by 13% as a result of the Taxing Master's activities²⁵.

Despite the controls on lawyers' fees in Northern Ireland, there are still costs disputes between parties and between solicitors and their clients. The 2020/21 Annual Report by the Lay Observer (for Legal Complaints) recorded that 37 of the 350 complaints referred to her about solicitors (just over 10%) related to insufficient information provided up front about potential costs or lack of transparency about eventual billing.

The Law Society of Northern Ireland has periodically run training on pricing and costs for solicitors and in 2020 reported to the Lay Observer that:

*"A Seminar on the Preparation of Bills and the Provision of Client Care and Costs Information was also delivered. This seminar was presented to Solicitor Trainees and is part of our ongoing approach to inform solicitors at the very earliest stage of their careers of their Regulatory obligations as well as demonstrating best practice in an area that continues to cause complaint"*²⁶

Ireland

Legal Costs have long been regarded as an issue of concern in Ireland²⁷. A review launched by the Department of Justice in 2020, the Administration of Civil Justice Review (the 'Kelly Review'), with the remit of examining how to control litigation costs, is ongoing. But changes relating to the management of legal costs introduced as a result of the Legal Services Regulation Act 2015 (LSRA 2015) are still in the process of being implemented.

The LSRA 2015 moved Ireland from a Taxing Master system, akin to that used in Northern Ireland, to an Office of the Legal Costs Adjudicators, which was established in 2019.

Inter-partes disputes and disputes between legal practitioners and their clients now fall within the remit of this Office, which has the power to hear and determine disputes relating to the amount and whether costs are reasonable. The Legal Cost Adjudicators do not have the power to deal with matters of poor or inadequate services, or complaints relating to misconduct, which are dealt with by the Legal Services Regulatory Authority.²⁸

The Act not only set up the Office of the Legal Costs Adjudicators but it also set out in statute various obligations of practitioners in relation to costs. For example in section 149, the Act states:

"S.149 Prohibitions on charging costs in certain circumstances

(2) A legal practitioner shall not, without the prior written agreement of his or her client, deduct or appropriate any amount in respect of legal costs from the amount of any damages or moneys that become payable to the client in respect of legal services that the legal practitioner provided to the client."

²⁵ [Report on Managing Legal Aid \(niassembly.gov.uk\)](https://niassembly.gov.uk/reports-and-publications/committees/justice-committee/reports/2017-18/2017-18-report-on-managing-legal-aid/)

²⁶ [lay-observer-annual-report-2019-20.pdf \(layobserverni.com\)](https://layobserver.org.uk/wp-content/uploads/2021/03/Lay-Observer-Annual-Report-2019-20.pdf)

²⁷ See, for example, [Caveat emptor: The soaring cost of legal services - Independent.ie](https://www.independent.ie/news/ireland/caveat-emptor-the-soaring-cost-of-legal-services-3671111.html)

²⁸ [Annual Report - Office of the Legal Costs Adjudicator](https://www.legalcosts.ie/annual-report-2020-21/)



And in section 150:

“150. (1) A legal practitioner shall, whenever required to do so under this section, provide to his or her client a notice (in this section referred to as a “notice”) written in clear language that is likely to be easily understood by the client and that otherwise complies with this section.

(2) On receiving instructions from a client, a legal practitioner shall provide the client with a notice which shall—

(a) disclose the legal costs that will be incurred in relation to the matter concerned, or

(b) if it is not reasonably practicable for the notice to disclose the legal costs at that time, set out the basis on which the legal costs are to be calculated....”

The costs notice has to include the amounts incurred or likely to be incurred by the solicitor and VAT likely to apply. Beyond this, as s.150 continues:

“if the matter which is the subject of the notice involves or is likely to involve litigation, provide—

(i) an outline of the work to be done in respect of each stage of the litigation process and the costs or likely costs or basis of costs involved in respect of each such stage, including the likelihood of engaging a practising barrister, expert witnesses, or providers of other services,

.....

(iii) information as to the likely legal and financial consequences of the client’s withdrawal from the litigation and its discontinuance, and

(iv) information as to the circumstances in which the client would be likely to be required to pay the costs of one or more other parties to the litigation, and information as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from other parties to the litigation;

.....

(5) Where the legal practitioner becomes aware of any factor that would make the legal costs likely to be incurred in a matter significantly greater than those disclosed or indicated in a notice relating to that matter provided under this section, he or she shall, as soon as may be after he or she becomes aware of that factor, provide the client concerned with a new notice.

(6) Where a matter which is the subject of a notice under this section involves or is likely to involve litigation, the legal practitioner shall not, in relation to that matter, engage a practising barrister, expert witness or provider of any other service without first, to the extent practicable—

(a) ascertaining the likely cost or basis of cost of engaging the person,

(b) providing the client with the information referred to in paragraph (a), and

(c) having complied with paragraph (b), satisfying himself or herself of the client's approval (whether express or implied) of the engaging of the person."

This is all reflected in the regulatory and disciplinary system, with an escalation regime set out by the LSRA, together with an explanation of what clients should expect and how they can challenge their bills²⁹.

As in Northern Ireland, there is a group of specialists who have emerged to support work on pricing, billing and costs disputes. These individuals may be known as legal costs accountants or law cost consultants. The former is emerging as a recognised profession and was defined in the Legal Services Regulation Act.

"legal costs accountant" means a person who has regularly participated in the preparation and presentation of bills of costs for taxation or, as the case may be, adjudication of legal costs and has regularly attended before a Taxing-Master on the taxation or, as the case may be, a Legal Costs Adjudicator on an adjudication, of such bills of costs" (s.2 LSRA 2015)

Legal Costs Accountants are members of the Institute of Legal Cost Accountants³⁰ which is a self-regulating profession and which was granted the right to nominate a member of the Legal Services Regulatory Authority³¹ by the LSRA 2015. However, the title of Legal Cost Accountant is not protected.

The legal costs profession in Ireland appear largely to market themselves only to the solicitor's profession. If consumers want to challenge their solicitor's fees or legal costs they therefore tend to go to agencies such as Citizens Information Ireland³².

As a result of the 2015 Act, the Irish solicitor's training curriculum has recently been revised and contains a new emphasis on costs (or "taxation") as one of the eight core subjects to be tackled in the first year of a solicitor's vocational training. The Law Society of Ireland also provides specific guidance to its members about how to avoid costs complaints³³.

What the experience of other Common Law jurisdictions tells us

Although civil justice systems across the Common Law world have their own nuances, the issue of concern over legal costs is universal. What emerges from the brief summaries above is relevant for any consideration of the regulation of Costs Lawyers in England and Wales.

It suggests:

- There is a desire everywhere for an independent view of legal costs and whether they are "fair and reasonable". In many other jurisdictions, this role is not immediately played out in the courts as it is in England and Wales but through an adjudication or mediation

²⁹ [Your Legal Bill Explained – Legal Services Regulatory Authority \(lsra.ie\)](#)

³⁰ [ilca – Institute of Legal Costs Accountants](#)

³¹ <https://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/pdf> (see section 9(4))

³² [Legal fees and costs for civil cases \(citizensinformation.ie\)](#)

³³ [Ten steps to a more costs-compliant firm \(lawsociety.ie\)](#)

process, or some other process which can escalate ultimately to be heard by the courts, but only as a last resort.

- The need for some kind of specialist involvement in costs issues is a common theme, perhaps in acknowledgment of the fact that lawyers themselves are not trained in any jurisdiction to understand how to cost their services. However, in a number of the jurisdictions looked at here, lawyers are receiving far more training than in England and Wales about their duties to inform clients about costs and manage legal costs.
- There is no other jurisdiction, which we have come across, in which a costs profession is regulated as it is in England and Wales. This is largely due to the fact that the traditional Taxing Office, or similar, used in many other Common Law jurisdictions, is not a judicial office and therefore costs drawers or legal cost accountants could appear in cost cases without needing to have specific rights of audience. Ireland, however, may well be moving towards a more regulated costs profession
- Consumers everywhere are poorly served in terms of information and transparency about what legal proceedings will cost them but some, like Ireland, are attempting to deal with this through legislation.
- There is no evidence of any innovation anywhere that is targeted at helping consumers understand better the potential price of any legal services they might be seeking and the cost/risk of litigation.

Part 6 – What does this mean for regulation?

A number of themes of regulatory interest emerged from our research. The evidence we gathered suggests that current regulatory arrangements are as yet sufficient to support the effective functioning of the legal market in relation to costs, limiting the role that Costs Lawyers can play in making the delivery of justice more efficient, distancing them from the end users of legal services and constraining their ability to engage in innovation.

i) Costs as an Ethical Issue

The message from users and suppliers of costs law services that emerged from our interviews, was not only that many stakeholders do not feel that the Jackson Reforms are working as they were intended to do, but also that they do not believe that further civil litigation reform is the answer (or at least the whole answer). There is more for regulators to do to support better control of costs earlier in the process (even before costs budgeting), not least in the form of better pricing/valuation services for clients and transparency about potential costs in a much more comprehensive way.

Although all Common Law countries appear to suffer from similar complaints about the high costs of litigation, the situation appears to be particularly bad in England and Wales. Evidence from other jurisdictions, e.g. Australia, Ireland and Northern Ireland, suggests that others impose (or are in the process of developing) much stricter conduct obligations on lawyers in relation to the fees they charge their clients and their control on the costs process, coupled with stronger roles for neutral costs assessors/adjudicators within their systems which avoid the need for expensive costs litigation.

In contrast, in England and Wales, the burden of appropriate checks and balances on costs is carried by limited and scattergun instruments such as client care letters and price transparency obligations, with possible recourse to OLC (for own solicitor costs) or otherwise to costs litigation. Unlike Ireland and Australia, costs are not taught at entry into the profession, as the emphasis is placed firmly on solicitors' accounts rules during the equivalent stage of training. There is also no holistic, integrated approach to doing what can be done at the earliest possible stage to inform consumers about costs, nor a process for working systematically through different steps to resolve issues over Solicitor-Owned Costs before potential litigation.

Even for more sophisticated clients (see box below on the views from a litigation funder) there was a sense that there was a need for some instrument in the market that would lead to better outcomes.

There are much bigger questions here which lie beyond the scope of this particular study but the immediate regulatory implications which emerge are:

- The need for there to be a profound discussion of costs in the sector as a whole, which is not simply driven from the perspective of litigation procedure but from an ethical perspective

- There is a woeful lack of awareness in many parts of the solicitors' profession of the financial aspects of the work that they undertake and therefore wide scope and demand for more of the kind of skills and services that Costs Lawyers can deploy but also for the SRA to do more to integrate an overall appreciation of costs into the solicitors' profession.

ii) The influence of current regulatory arrangements on Costs Lawyers role in the market

A Litigation Funder's View

"Solicitors give a shocking and shoddy service on costs and their budgets are always wrong. Costs are a scandal and there is increasing concern from judges. Costs budgeting alone doesn't help – needs to be an independent third party in the process."

There was a strong view that emerged from our survey and interviews that the current regulatory state of affairs created by the LSA 2007 made no sense. It has left Costs Lawyers with the status of a regulated profession but with little impact from that regulation, given that the vast majority of their services are delivered to, and through, solicitors' firms.

Some who responded to our survey and in interview wanted a greater space in the market reserved to Costs Lawyers.

Views expressed ranged from the absolutist:

"I don't think unqualified professionals should be allowed to practice."

To more nuanced views which suggested that certain additional activities relating to costs work should be made regulated activities (e.g. Issuing a bill of costs).

The larger clients and litigation funders we spoke to, suggested that whilst regulation was useful (the code of conduct, insurance etc), the most important factor in delivering impact, was practical training. Having access to an independent profession which is able to give realistic, applied judgments on costs would be invaluable. Also, one which could be instructed by third-party funders - on behalf of their clients - to monitor and scrutinise cost budgets at a much earlier stage, or to audit panel costs for corporate legal departments, was something that the market clearly didn't feel was currently on offer (even though there are evidently some Costs Lawyers advertising such services). Strengthening the position of Costs Lawyers as independent actors in the sector, outside of employment in solicitors' firms, was seen by some of our interlocutors as something that could add real value to the market.

"We would always prefer to instruct an independent costs firm rather than the costs department of a solicitor's firm. They have experience across the market not just from their firm, have experience of working on both sides and can be used more like barristers to give an independent view on costs". - Defendant insurance company

There were also concerns, expressed in both our interviews and survey, that there is likely to be a sharp increase in the number of Solicitor-Own Client Cost disputes in the near future, driven by recent ground-breaking cases in this area. At present, the lack of a clear distinction between Costs Lawyers and costs draftsmen (and others) has had no real impact, because the clients for costs work are still overwhelmingly other professionals, but there was a real sense amongst Costs Lawyers that consumers could be put at risk by unregulated costs services providers encouraging

unmerited claims against solicitors on the back of these judgments. The CLSB has, for example, recently received enquiries from a handful of individuals who have used the services of costs draftsmen and assumed they had recourse to complain to the CLSB because they did not know the difference between the two.

Beyond the issue of the statutory position of Costs Lawyers, there are some regulatory arrangements worth flagging because they appear to be impacting on Costs Lawyers' ability to contribute to costs management:

- For example, some costs lawyers both from the survey and interview, felt constrained by the definitions of 'costs' as set by the Lord Chancellor and felt that this was too narrow, impacting their ability to diversify.

"The limit on what constitutes 'costs' can cause difficulty offering services where costs compromise [sic] most, but not all, of an issue." (**survey respondent**).

"Not restrictive as a regulator but CLSB too focused on inter partes costs." (**survey respondent**)

It is not entirely clear why the narrow definitions of costs work used by the CLSB should be felt to be a limiting factor since Costs Lawyers are only prohibited from working on reserved legal activities for which they are not authorised. But this perhaps reflects the fact that the profession does not fully understand the role of regulation.

Quality and competence were also themes that came up repeatedly. When asked what value regulation can add, 45% of respondents to the survey mentioned the quality of service, often suggesting that regulation ensures minimum standards for costs lawyers to attain.

"I think regulation should get more involved in the quality of work. Sometimes I wonder why we're instructed if our internal model of profitability means that we are put under pressure to not read the papers, not engage with the issues, make standard challenges and settle within standard parameters – the client can do that, so we're just an added expense." – **Interviewee**.

"I think regulation sets a benchmark for what is expected of a competent costs lawyer who is obliged to keep their knowledge up to date. I think the CLSB could potentially use that from a marketing perspective and promote awareness of the CLSB, who it regulates and what is considered best practice. If you asked a cross-section of authorised persons who the CLSB are and what [they] do I suspect most wouldn't know." – **Survey respondent**

The role that entity regulation could perhaps play in strengthening the independence of the Costs Lawyer profession came up repeatedly in our research. It was felt that the benefits of entity regulation could be numerous, including:

- A strengthened capacity to access work from insurers directly because of the stronger corporate protections which would be involved (e.g. guarantees around standards applying across the firm).
- Visibility could be increased for other potential client groups (e.g. in-house counsel) and the use of the CLSB badge would be more coherent than it is at present).
- There would be scope to strengthen regulation around the use of agents in costs hearings – allowing costs draftsmen to be used but only as agents of a regulated solicitor or Costs Law firm.
- And finally, Costs Law firms who wished to be regulated as entities could have an alternative to SRA regulation.

The Benefit of Entity Regulation

“There needs to be regulation of firms of costs lawyers rather than just individuals, that will mean firms can go on court record like solicitors. Would make a huge difference to access to justice. Ability to challenge fees for a client means individuals need someone with the appropriate rights of audience to challenge those solicitors’ fees. We can go on court record as individuals or they can instruct another firm of solicitors which means paying another firm to challenge”.

Costs lawyer in a costs firm

“Regulation of firms rather than individuals would make the industry more transparent, should improve quality and reputation”

Survey respondent

Entity regulation was also felt to be relevant to the issue of Solicitor-Own Client cost complaints. Although there was no great desire evident among Costs Lawyers to serve consumer clients directly (nor evidence of the necessary skillsets), it was pointed out by more than one interviewee that the inability to hold client money – other than through a Third Party Managed Account (TPMA) - acted as an effective bar to working for consumer clients. For Costs Lawyers to be willing to take such cases they would need to be able to take security and hold clients’ money. As the preceding discussion illustrates, enabling Costs Lawyers to act independently of solicitors’ firms is key to their ability to play a bigger role in ensuring value for money in litigation (and advice) work.

Entity regulation is also a factor in innovation. As pointed out previously in this report, size is a factor for Costs Law firms, which are, on average, very small organisations. Where Costs Lawyers are engaged in more innovative activities, these are most often in larger organisations, usually with a mixture of professionals involved. Acumension³⁴, for example, is a company comprising insurance experts, legal project managers and a costs lawyer. It focuses on providing legal costs services to the insurance industry (inter alia) and highlights on its website the paperless nature of the firm’s work and its adoption of ISO standards, especially around data handling. Bottomline Technologies³⁵ is an online Software as a Service (SaaS) provider which employs Costs Lawyers and which includes a module for business clients on managing legal spend.

Whilst there is no evidence that the CLSB’s regulation has a negative impact on innovation by Costs Lawyers, there is equally no evidence to suggest that it is facilitating it. The focus on costs

³⁴ www.acumension.com

³⁵ [Business Payments Transformation | Bottomline](#)

and the definition of costs in its work, the absence of any modules relating to innovation in the Costs Lawyer Training course and the absence of an entity focus, all play a (small) part in contributing to an environment in which little innovation is apparent in Costs Law firms or solicitors' firms, where most Costs Lawyers work.

Part 7 – What can be done?

This section draws together the above findings to suggest actions which the CLSB, and other stakeholders could take to improve the functioning of the legal costs market. These break down into five broad areas:

- The broadening of the sector-wide debate around legal costs to infuse fresh thinking into how underlying issues might be tackled beyond further adjustment in civil procedure rules.
- Regulatory actions to strengthen the ability of Costs Lawyers to act as independent costs advisers within the market.
- Collaborative action with others (e.g. ACL and ACLT) to increase the number of Costs Lawyers available to the market.
- Specific actions to protect consumers
- Actions to encourage innovation in the efficient and effective control and allocation of legal costs.

Recommendations

i) Facilitate a different legislative, or regulatory set-up to exert a downward pressure on the cost of legal services

The ongoing costs challenges in the legal market have profound implications for the kind of regulator that the CLSB wants to be.

At the very least, there is a role for the CLSB to be more proactive on policy matters relating to costs and providing a voice for those who want to see a better functioning market for legal costs.

As a starting point the CLSB could (should?) initiate a sector-wide discussion on the current shortcomings of the costs market in England and Wales. It could highlight other legal regulators that there is collaborative work to be done in areas like training, ethical codes, communication with clients etc. This work extends far beyond questions of civil procedure reform.

The CLSB should also be advocating for the LSB to take a broader approach to costs than simply focusing on specific points relating to consumers (or at least to put its work in these areas of consumer empowerment in this wider context). England and Wales could learn from other jurisdictions, such as Ireland and Australia, and launch a debate around “excessive costs” without undermining the operation of the market. Greater transparency about fees, which goes way beyond the limited measures taken so far, responsibility to communicate with clients and less onerous methods of challenging costs would all improve the functioning of the market.

As a more general observation, the breadth and depth of complaints about conduct in relation to costs across the board, and particularly at the commercial end of the market, suggests that the independent regulators in the legal sector are too divorced from the complexities of how the litigation market works – there is a need for more expertise in this highly technical area to be imported into regulatory policy discussions.

ii) Regulatory actions to strengthen the ability of Costs Lawyers to act as independent costs advisers within the market.

There are, however, some actions that the CLSB could take unilaterally to strengthen the ability of Costs Lawyers to play a constructive role in the costs market and to increase the profile of Costs Lawyers in the market and to direct consumers:

a) Changes to the Costs Lawyer Handbook

The Costs Lawyer Handbook sets out the Principles of Regulation governing Costs Lawyers and in Principle 3.1 states:

“You must act at all times to ensure the client’s interest is paramount except where this conflicts with your duties to the court or where otherwise permitted by law. You must decline to act if it would not be in the client’s best interests or if that client’s interests conflict directly with your own or with those of another client”

As illustrated by our interviews and the results of the costs market survey, there is a widespread perception within the Costs Lawyer profession that “the client” is the instructing solicitor and this will apply regardless of whether the Costs Lawyer is acting ‘in house’ or within a Costs Law firm. The only difference being that there is some evidence (though more limited than might be expected) of Costs Law firms being instructed directly (e.g. by an insurance firm).

The reference by a number of interviewees to their use of Costs Lawyers as ‘independent’ advisors - acting almost as barristers might - raises the interesting possibility that a stronger distinction between the interests of instructing solicitors (or others) and the ultimate client could be reflected in the Costs Lawyer regulatory principles. The Bar Standards Board Handbook, for example, contains the important distinction between “clients” and “professional clients”³⁶:

*“Your duty is to your client, not to your professional client or other intermediary (if any).”*³⁷

Clearly any change of this type could not be made in isolation but would have to be reflected more broadly in wider changes to the Handbook, recognising and flagging the implications of the different ways in which Costs Lawyers can operate in the market. However, this is a particularly key principle and a starting point for other consequential changes.

³⁶ See BSB Handbook Definitions: “professional client - means in relation to giving instructions to a BSB authorised person: a) any person authorised by another approved regulator or licensing authority; etc.”

³⁷ Guidance to Rules C15-C16 and relationship to CD2 and CD6-CD7

b) Re-framing entity level recognition

Given the complexities around introducing entity regulation for Costs Lawyers, the likelihood is that it is simply not a financially viable proposition for the CLSB or those who might be interested in becoming regulated entities. There may, however, be other ways of approaching the needs that Costs Law firms have for some form of organisational recognition that could achieve some of the regulatory effect at much lower cost.

- One possibility would be for a collaborative alternative to be arranged, in which the CLSB works with another regulator. Just as ACCA has chosen CILEx Regulation as its entity regulator, perhaps the CLSB could work with the BSB, or another entity regulator, to construct an appropriate model for Costs Law firms?
- Alternatively, the CLSB could work up a voluntary approach, allowing Costs Law firms who wished to use the CLSB badge to do so if they met certain criteria such as having a firm-level complaints handling process, holding insurance etc.

c) A distinct regulatory approach for an intermediary legal profession

The CLSB could also strengthen the perception of the distinctiveness (not to mention the existence) of the Costs Lawyers' profession by raising its own profile. This would help to increase recognition that what a Costs Lawyer might be able to offer is quite different to what solicitors offer to the market in relation to costs law, a distinction which risks becoming blurred as solicitors' firms employ an increasing number of Costs Lawyers³⁸.

This could mean, for example, working with the LSB to come up with different indicators and measures of success for an intermediary profession. Instead of using limited CLSB resource on regulatory initiatives such as consumer engagement and ongoing competence that are largely designed for the solicitor market, the CLSB should be given the flexibility by the LSB to find its own way to ensure Costs Lawyers are able to make the most positive contribution they can to the evolution of the legal market.

iii) Contributing to a more influential profession

Although it is not the job of the CLSB to grow the market for the profession that it regulates. It is a legitimate regulatory objective for it to take action to underline to the wider market the role that Costs Lawyers can play. The CLSB could, for example, do the following:

- Firstly, it could help to raise awareness of the role that the Costs Lawyer profession can play in the market (e.g by establishing a 'user panel' and talking more directly to actual and potential institutional and corporate end-users of Costs Lawyers). To a large extent this is where the CLSB's "consumer (sic) engagement" could potentially have most impact.
- Secondly, the CLSB could work with the ACL on delivering more coordinated messaging about the role and advantages of using Costs Lawyers and coordinate this with other action, e.g. around the use of the CLSB badge. The lines between the professional body/trade union and the regulator, however, should remain clear and therefore promotional activities on behalf

³⁸ Although we did also hear views suggesting that the effect of the extension of the fixed costs regime could be to push more costs law work out of solicitors' firms

of the profession should fall squarely within the remit of ACL. The CLSB should consider means of ensuring the profession provide greater value to clients and consumers such as developing an ongoing competence framework, that ensures that where costs lawyers' expertise and skills can be enhanced to meet emerging market needs.

- Lastly, the CLSB could work with ACLT or any other providers it may seek to authorize to expand the numbers entering the profession. This is a difficult balancing act, as it would involve finding ways to increase the opportunities for supervised practice whilst maintaining (and even increasing) quality of those emerging from the training course.

There are significant consequences arising from this, especially for the training of new entrants to the market.

- Overall, the CLSB should consider drawing up a strategic plan which has this goal of using regulation to clarify and expand the positive role that Costs Lawyers could play in the market at its heart. This is something to be considered when the current plan which runs through to 2023 comes to an end.

iv) Consumer related action

As discussed in Part 6 above, there are potential concerns emerging around Solicitor-Own costs challenges and the need for tighter regulation to protect consumers against costs not covered in no-win / no-fee agreements, over and above what might be done through the CPR.

- The CLSB could work with other legal sector regulators and the OLC to set out a more structured escalation of costs disputes for consumers. If an alternative approach to unleashing a raft of Solicitor-Own Client Cost disputes on the courts could be designed, this might dovetail with existing complaints regimes with a specific focus on costs and using a panel of independent Costs Lawyers to adjudicate.
- Set out guidance or define a specific set of regulatory outcomes relating to "direct access" work by Costs Lawyers.

v) Encouraging innovation

Innovation would be much more likely to take root in the costs market if the services of Costs Lawyers were to be used by the more innovative ends of the legal services market. At present, because of the dependence of the Costs Lawyer profession on solicitors, there is a limit on the demand for any innovative services. If Costs Lawyers were better known beyond the niche costs law market, their contribution to the development of innovation in the sector could be increased.

The CLSB could also broaden the compass of its communication with Costs Lawyers, many of whom seem to be under the impression that the CLSB limits them in some way through its definition of costs law in the code of conduct. This could involve active encouragement of the profession to be more innovative.

A starting point for this could be, for example, achieved via the influence that the CLSB has on the Costs Lawyer qualification. It could not only encourage a greater focus on innovation within

this initial course but also the creation of new CPD modules that focus on skills in new areas and specialisms such as Legal Project Management, legal technology, pricing etc.



Part 8 – Conclusions

Action undertaken through civil justice reforms over the past two decades has yet to successfully address the challenges of ever-rising costs. As questions are raised about the impact of the Jackson reforms and whether an extension of the fixed costs regime is actually the answer to the problem, this report and its recommendations come at a timely moment.

The aim of this project was to explore how the services provided by Costs Lawyers could exert a downward pressure on the costs of legal services. Critically, this included considering the extent to which the current regulatory and legislative framework helps or hinders the emergence of innovative services by costs professionals. Further, the extent to which different legislative, or regulatory set-up might help Costs Lawyers to reduce the cost of legal services.

There is a need for a more visible and assertive costs profession – one which recognises that there are different potential modes in which a Costs Lawyer could operate: as the agent of a solicitor (as at present), as an independent counsel or as a direct access lawyer for consumers. In particular, the advantages of a world in which Costs Lawyers feel more empowered to act as independent agents are compelling. The unexpectedly positive response we received to our survey and from individual Costs Lawyers and their clients in interviews, suggests a profession keen to be engaged and to contribute to policy and action that will enable their survival beyond the extension of the fixed costs regime and to truly make an impact on legal costs.

The regulatory framework for Costs Lawyers, now in its second decade, is ripe for review. The output of this project presents the CLSB, not simply with material to assist in this review, but also with a starting point for a much more profound sector-wide debate on how to improve the approach to the entire system of legal costs in England and Wales.

Hook Tangaza

March 2022

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ANNEXES



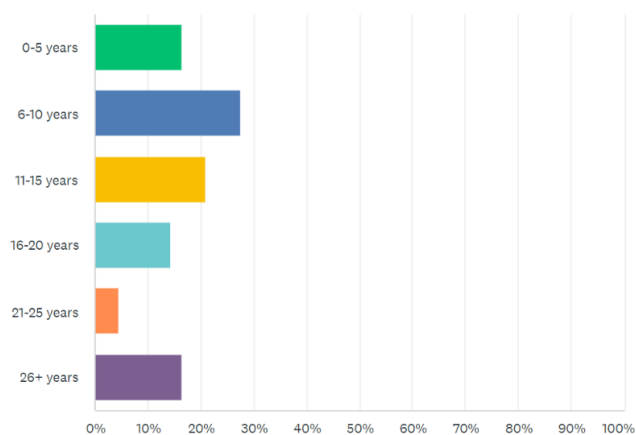
Annex A: Results of Costs Law Market Survey

The following sets out the results from the Costs Law Market Survey conducted in January/February 2022. The survey received 91 responses in total.

Question 1: How Long have you been working in the costs market?

How long have you been working in the costs market?

Answered: 91 Skipped: 0

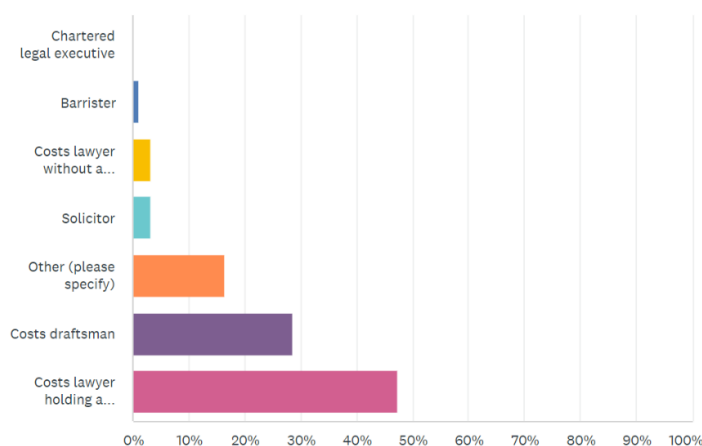


Results: 0-5 years 15 (17%); 6-10 years 25 (27%); 11-15 years 19 (21%); 16-20 years 13 (14%); 21-25 years 4 (4%); 26+ years 15 (16%)

Question 2: What is your job title/role?

Please indicate which of the following applies to you

Answered: 91 Skipped: 0



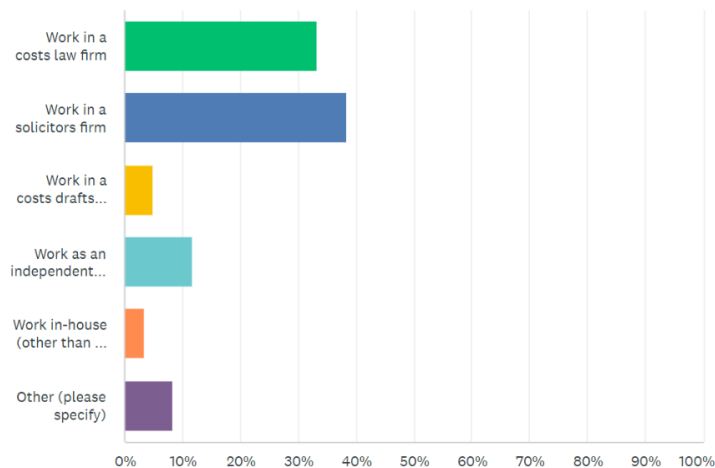
Results: Chartered legal executive 0 (0%); Barrister 1 (1%); Costs lawyer without a practicing certificate 3 (3%); Solicitor 3 (3%); Other 15 (16%); Costs draftsman 26 (29%); Costs lawyer holding a practicing certificate 43 (47%).

Question 3: Where do you work? (Costs Lawyers)

This question was directed only at respondents who had indicated they were a costs lawyer holding a practising certificate in question 2.

Please indicate which of the following best applies to you

Answered: 60 Skipped: 31



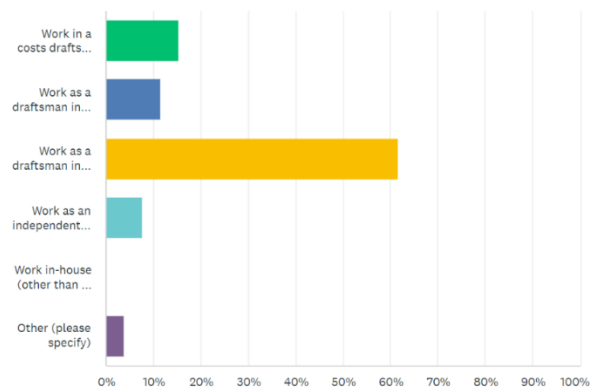
Results: Work in a costs law firm 20 (33%); Work in a solicitors firm 23 (38%); Work in a costs draftsmen firm 3 (5%); Work as an independent costs lawyer 7 (12%); Work in-house (other than a solicitors firm) 2 (3%); Other 5 (8%).

Question 4: Where do you work? (Costs Draftsmen)

This question was directed only at respondents who indicated they worked as costs draftsmen.

Please indicate which of the following best applies to you

Answered: 26 Skipped: 65



Results: Work in a costs draftsmen firm 4 (15%); Work as a draftsman in a costs lawyer firm 3 (12%); Work as a draftsman in a solicitors' firm 16 (62%); Work as an independent costs draftsman 2 (8%); work in-house (other than a solicitors firm) 0 (0%); Other 1 (4%).

Question 5: Changing Services/Innovation

This question asked respondents how their services had changed in recent years, it was an open question with no multiple choice.

This question received 61 responses. Below are all the responses.

- Very little has changed, except that we receive a greater proportion of higher value and more complex cases.
- The move to remote access to solicitors' case management systems to prepare Bills and the increased speed with which Bills are required (quantity over quality)
- Before, cases settled without the need for involving a Costs Draftsman. I worked for an external drafting Company on a deferred commission basis. With costs involved at an earlier stage there were far longer waits for payment and greater risk of not being paid. I switched to an in-house role, which involves preparing a lot of fixed costs calculations. I'm no longer on a commission basis so my potential earnings are lower. But the risk is lower and pay more consistent.
- More time spent developing spreadsheet solutions for clients and assisting with costs data handling for solicitors and other costs professionals. Less time spent drafting bills of costs. Cases that go all the way to contested assessment whether for paying or receiving party are now a rarity. Time spent dealing with costs budgets is on the increase.
- I used to prepare various and many costs schedules however with the 2013 changes these became more infrequent. Also changes to fixed costs has affected the work I do, which is almost solely multi track work
- Different areas
- Different types of clients ranging from solicitors to LIP different types of work - RTA, HD, Clin neg more focus on advocacy and mediation
- More Costs Management/Budgeting work
- Since 2013 budgeting, since 2018 new style bill (no longer preparing hybrid bills), advising on fixed costs more common as solicitors often not up to speed on this.
- I have not yet witnessed any changes as I am still new to the industry
- More costs management/budgeting work
- Costs Budgeting.
- All of the above, primarily diversification of work type (RP not just PP) also approaching a LPM approach at present
- More specialist costs work, more varying costs work
- More specialist work due to changes in the market i.e more costs budgeting.
- Specialist in High Value Serious Injury cases
- Housing Disrepair has taken off, Costs Budgeting remains quite strong, a little more solicitor / own client work
- Not affected
- More specialist work, new budgeting work and regime, more queries on fixed costs regimes coming in
- Have always worked with Legal Aid costs and the biggest change came in 2013 with the reforms and it is now mostly Public law work which is costed
- We offer services to a wider variety of specialisms. We focus on high end bespoke work. We now offer mediations and other ADR services.
- Changes and reforms have meant adapting i.e budgets, CMC fixed costs and satellite litigation

- Services have turned into more of a conveyor belt process, with a lot of emphasis placed upon speed and profitability while little to none is placed upon quality or engaging with facts, issues or arguments.
- Yes
- Massively as I use case law to argue all of my points of dispute now in more specialised costs work
- LAA work had increased signification since Covid. Cases run longer with higher costs
- Specialist work, Training incorporating Costs etc
- Specialised costs work and inter partes
- Different types of claims
- For the past few years I have specialised in costs work relating to leasehold property claims. Previously I dealt with PI claim work.
- I have moved from exclusively PI / Clin Neg to a more varied workload, media, commercial litigation and PI
- I play a big part in training across the firm. I can see project management becoming more prevalent and it's a part of my role now. Costs litigation has definitely become more specialised and I think costs lawyers/draftspersons are recognised more in their own right.
- More specialist work, more complex instructions.
- More specialised
- Moved into a more specialised area
- It has changed as it's more difficult to get work now compared to what it used to be like 25 yrs ago
- More legal aid
- Different / specific areas of law. Complexity of cases
- Massively. More specialised costs work with more Lips, more mediation and about to branch out into project management in its pure form but fair to say we have been doing that for years under a different guise.
- More CoP work. More time spent on elec bill
- More budget work
- More litigants in person. A strategic partner for law firms from start to finish of conduct of case
- Specialise in costs management. Did everything before Jackson reforms
- More complex and intricate work
- New format bill
- More specialised cost work
- More specialist, narrower areas
- All of the above
- More legal aid work
- Lots of time spent on budgeting, group litigation
- Very little
- No change
- I'm working in the audit of legal bills served on corporate clients
- Budgeting electronic billing and cost management in legal aid cases what is left of it
- Not changed much (we are still relied on for a number of costs pleadings) but the amount of work we undertake within costs management (Budgeting, revising budgets) has increased significantly.
- More specialist med neg high value budgets and ccmcs
- They haven't really apart from more contact with lay clients re post laspo stuff.
- More high value, complex work in PI & CN. Differing instructions/niche markets in Civil Litigation. Solicitors more keen on training & obtaining advice on costs management/best practice
- More fixed costs work
- COP work - little change in provision
- There have been no fundamental changes to date

Question 6: How do you think the costs market will change over the next 5 years?

This question received 60 responses. Below are all of the responses.

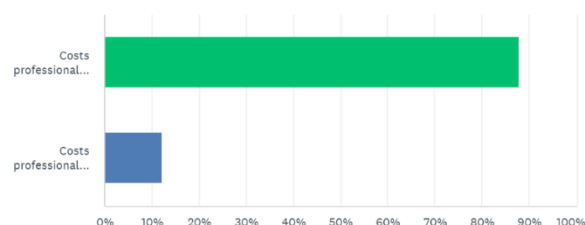
- I hope there is an increase in the application of fixed costs to protect paying parties. The relatively untapped market – costs lawyers acting for buyers of legal services – should develop, but this would require support from the ACL and CLSB.
- More remote and electronic working, the need to be increasingly tech savvy
- A switch to fixed costs and will move more of the costs work to being done in-house. Arbitrary Costs Budgeting limits will force Claimants to act as litigants in person to avoid retainers that will cost them more than they stand to recover. High value claims relied upon for profit to cover the losses from unprofitable fixed costs claims will also have costs restricted to the point they are unprofitable. More Solicitors Firms will close and those left will be full of stressed staff working long hours just to make enough chargeable hours to be profitable.
- Fixed costs will reduce the market considerably particularly outside major cities. Otherwise improvements to case management software will mean most solicitors will be producing usable data reducing considerably the amount of work costs professionals have to undertake. Any costs professional who is not highly literate in spreadsheets and data handling generally will be in difficulties.
- An increase in the application of fixed costs
- More specialist work that only costs persons can undertake
- More virtual hearings like through COVID more fixed costs work if the £25,000 limit is brought in
- Less work if fixed costs start applying to Clinical Negligence claims
- More fixed costs advice given the imminent introduction of more extensive fixed costs, potentially less budgeting if Vos gets his way.
- Fixed costs will have a significant impact on those dealing with PI claims, and could be a risk.
- Legal project management
- More focus on legal project management
- More fixed Costs
- Further diversification, expect LPM to be quite a big one
- There is going to be less work, but it will be more valuable on average
- More fixed costs
- I am really concerned that the vast majority of us are going to be out of work. If they push for fixed costs to £100,000 then it is going to kill the industry
- Budgeting
- An increase in Solicitor-Own client work and less work at the mid-range as a result of further fixed costs regimes
- Possibly changes to the LAA contract including Parents being means tested in care proceedings and wider scope for exceptional funding
- Fixed costs limiting the available work and mediation/formal ADR moving to the forefront.
- Expansion to fixed costs limited costs budgeting work
- I expect fixed fees will become standard.
- Increase in demand for LPM
- Fixed costs
- Increasingly sub litigation raising rather than reducing costs
- More central and more in-demand than ever
- Influx of LPM tasks
- Different types of claims
- More mediation. Fewer costs hearings.
- Fixed costs up to at least £50k in PI More flexible budgeting regime
- Solicitor client disputes will increase exponentially, project management will become more of a role for inhouse costs lawyers. The expansion of fixed costs will result in more satellite litigation.
- More regulation and low quality draftsman going out of business

- Even more specialized
- I suspect I will no longer be employed due to the introduction of fixed costs
- More fixed costs
- Complexity and fixed costs
- Too broad a question for this survey
- Less bill drafting due to expansion of fixed costs
- Less traditional bill drafting work
- Wider application of fixed costs - more technical arguments to escape fixed costs regime. Wider solicitor client disputes. More firms going bust as margins are tighter and tighter
- Less low value work due to fixed costs regime
- Need to develop technology
- Solicitors need to be better with attendance noted
- Smaller cost industry as a consequence to the extension of fixed costs.
- Hopefully providing broader range of devices to law firms to have more varied work
- More fixed costs, so more advocacy and project management
- Unknown
- Further fixed costs
- More fixed costs
- No change
- More fixed costs and less drafting related work but a bigger presence in costs management
- We need to be flexible to survive so will go with demand
- More of a drive to get people more familiar with the modern, Excel versions of costs pleadings which are already greatly easing the assessment process. I would also anticipate there will be fixed costs for a larger range of matters.
- Fixed costs reforms Intermediate track Possible budget reforms
- A lot more fixed costs i think
- More fixed costs but also the costs market will become more specialised, complex & possibly niche
- Even more fixed costs work
- Electronic assessments for all areas
- There is the new Court of Protection e-bill to arrive during 2022 although with negative publicity and the now CA case re bill format, time will tell.

Question 7 Do you think costs professionals make a difference to overall costs or simply redistribute costs away from their own clients?

In your opinion, in inter-partes cases, do costs professionals make a difference to overall legal costs or are costs simply redistributed between parties?

Answered: 66 Skipped: 25



Results: Costs professionals impact overall legal costs 58 (88%); costs professionals redistribute costs away from their own client 8 (12%).

Question 8: Does your role impact on the overall costs of legal services and if so, how?

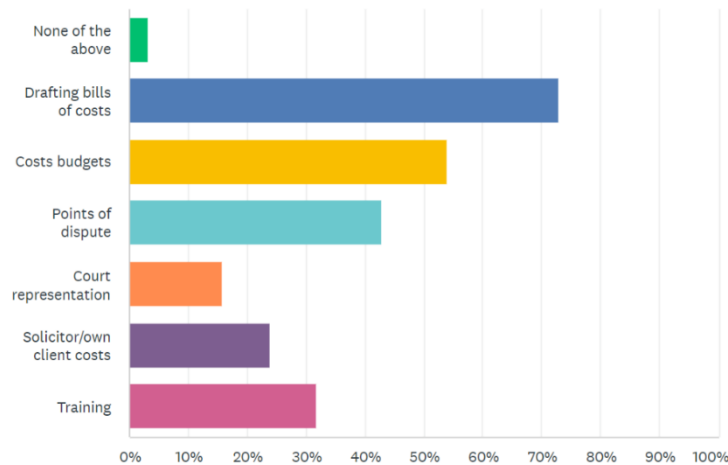
This question received 51 responses, of these responses 16 were no/none and 2 respondents indicated the question did not apply to them. Below are all of the remaining responses.

- No, other than reducing receiving party fees by more than 40% on average, which presumably reduces costs overall as in most cases the client will not be expected to pick up 100% of the non-recovery. I plan to develop services for buyers of legal services with a view to changing the market place so that buyers are better able to control legal costs.
- Only what you would expect. I maximize own solicitor costs and minimize costs payable to other parties.
- Inter partes
- Yes, by effective planning and analysis of legal spend
- Involvement in the budgeting stages, controlling spend once budgeting is established.
- I have to report to my Clients on all offers and negotiations.
- Yes through costs budgeting but also through a feedback cycle with clients and education re what is chargeable
- budgeting, settlement offers
- Save where we are instructed on an ongoing basis during the case life and we can provide a positive ongoing impact otherwise the answer is no
- To some degree, I am responsible for what we charge and how we limit our fees case by case
- I advise and limit the costs my client claims to ensure that only recoverable costs are claimed. I prepare and advise on budgets setting the level of costs for clients.
- No, we only get involved at the end. Often, the client would have benefited from early quality intervention.
- Yes, extensive budgeting work
- own solicitor costs being reduced
- Cost budgeting/forecasting and projections so yes
- Yes, both IP and solicitor client budgeting
- I routinely conduct budget audits and help those who instruct me be mindful of the costs issues in budgeted cases.
- I don't understand the question.
- Ensure fair and equitable costs for work done
- Any Costs Lawyer, doing their job properly, should provide a control on the overall costs of legal services. The problem we have is that we have unqualified within the profession who can undercut the CL's meaning that some CL's don't adhere to their professional standards to maintain the work.
- Setting budgets and working within those budget limits
- Monitoring budgets so client knows spend (sol client) or a revision to budget can be made (inter partes)
- Yes. Legal aid party bill
- Don't understand question
- Inter-parties costs
- Legal aid solicitor costs
- Yes, for solicitor-client costs this area is rapidly changing.
- No only advisory as cases build
- Inter partes budgets and costs management
- Mainly inter partes work but I do assist colleagues with solicitor-client costs.
- Yes, we liaise with all legal service providers regarding their fees/costs
- Question is unclear - control?
- Rarely

Question 9: Which activities make up the majority of your work?

What activities comprise the majority of your work? (choose up to 2)

Answered: 63 Skipped: 28

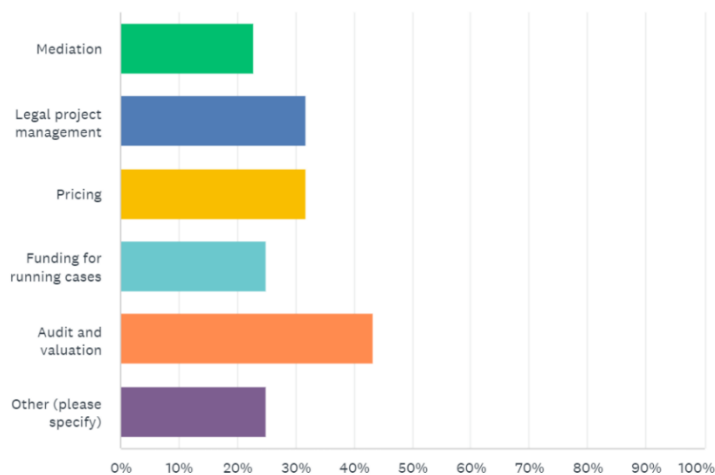


Results: None of the above 2 (3%); Drafting bills of costs 46 (73%); Costs budgets 34 (54%); Points of dispute 27 (43%); Court representation 10 (16%); Solicitors-Own client costs 15 (24%); training 20 (32%).

Question 10: Are Costs Professionals undertaking any more innovative activities outside of core costs law work.

Do you engage in any of the follow activities in addition to the above services? (Choose all applicable)

Answered: 44 Skipped: 47



Results: Mediation 10 (23%); Legal Project management 14 (32%); Pricing 14 (32%); Funding for running cases 11 (25%); Audit and valuation 19 (43%); Other 11 (25%)

Question 11: Does CLSB regulation restrict your ability to serve your clients or develop innovative services?

This question received 51 responses, 33 of which were no/none, a further 6 noted CLSB regulation did not apply to them. All other responses are below.

- I don't think so. I am keen to change the interface between legal services providers and buyers to better empower buyers. This will involve a multi-disciplinary solution (technology, procurement, law) and I am not sure as yet whether regulation will impinge on this at all. One barrier I foresee is insurance, as these activities would stray beyond traditional legal costs work.
- The limit on what constitutes 'costs' can cause difficulty offering services where costs compromises most, but not all, of an issue.
- CLSB, FSA, SRA
- None that I am aware of unless individuals are wanting to move away from general costs and that is pushing the boundaries
- The SRA regulate my firm
- The only sort of work that we regularly turn away is enforcement of costs awards.
- Not restrictive but CLSB too focused on inter partes costs
- Not that I can think of. I don't feel restricted in what I do for those who instruct ne.
- Handling client money
- Not being able to take payments on account
- Not really aware of what CLSB do or don't do. Not very visible relationship. Just pay the fee annually and that's that.
- Yes
- Yes authorisation limited

Question 12 : What value does regulation bring to the costs profession?

This question received 37 responses. 8 responses were NA/not sure. Below are all of the remaining responses.

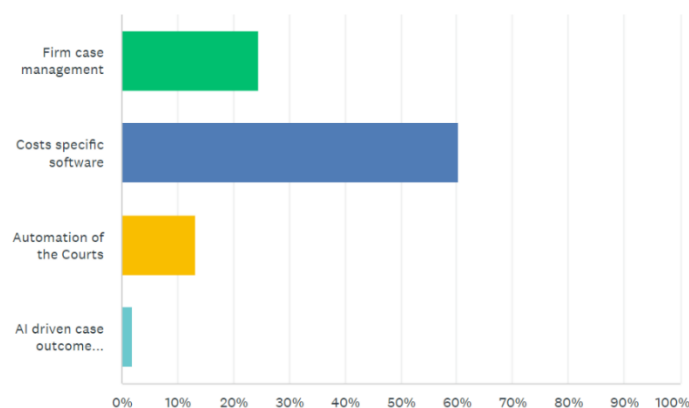
- Since I think the profession should be aiming its services increasingly at buyers, regulation is more important than when providing services via solicitors.
- Legal costs work should be a protected activity to protect the public and solicitors from unqualified cut & paste, by the script parties engaging in costs work.
- I suppose it would encourage some employers to be more proactive about ensuring staff are better trained and equipped to meet certain standards they don't necessarily monitor at the moment.
- None. Creating an entire new tier of the legal profession just to deal with legal costs is proof positive there are systemic issues with our system of justice.
- Accountability
- More regulated Costs Draftsman
- more professional and expertise
- Assurance of quality
- Higher rights of audience
- Get rid of the non-qualified in the hope that what work is left will be sufficient for the qualified
- Quality, Credibility
- Perhaps in mediation?
- Not sure this would apply to the Public funded sector
- Regulation ensures we are viewed in a certain light and can charge a certain amount.
- I think regulation should get more involved in the quality of work. Sometimes I wonder why we're instructed if our internal model of profitability means that we are put into under pressure to not read the papers, not engage with the issues, make standard challenges and settle within standard parameters - the client can do that, so we're just an added expense.

- Fixed costs
- The existing regulations are probably adequate.
- I think regulation sets a benchmark for what is expected of a competent costs lawyer who is obliged to keep their knowledge up to date. I think the CLSB could potentially use that from a marketing perspective and promote awareness of the CLSB, who it regulates and what is considered best practice. If you ask a cross section of authorised persons who the CLSB are and what do I suspect most wouldn't know.
- I don't think unqualified professionals should be allowed to practice.
- None - any costs professionals are not regulated despite promise in 2008 that the introduction of CLSB would ensure the profession was regulated
- Regulation should be mandatory to protect the public
- A minimum standard of expertise
- Provide that new entrants must have business premises. Also must have business insurance and Law society insurance.
- Prevents unprofessional conduct that results in more cases going to PA and DA and wasting court time
- LPM / ADR
- Regulation of firms rather than individuals would make the industry more transparent, should improve quality & reputation
- All areas of costs. Regulation gives security and confidence to clients that work is being undertaken (or overseen) by trusted parties
- Peace of mind to all concerned

Question 13 How do you use technology in your work?

Is technology making any difference to your work and that of the costs profession?

Answered: 53 Skipped: 38

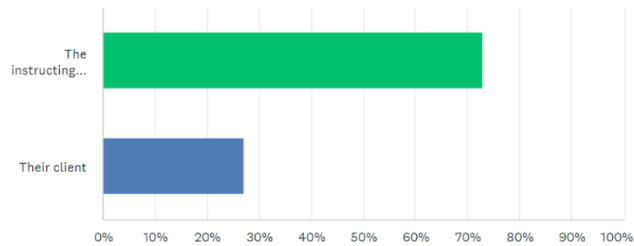


Results: Firm case management 13 (25%); Costs specific software 32 (60%); Automation of the courts 7 (13%); AI driven case outcome prediction software 1 (2%).

Question 14: Who is the Client of costs professionals?

If you are a costs lawyer or costs draftsman, whom do you consider to be your actual client - the instructing solicitor or their client?

Answered: 59 Skipped: 32



Results: The instructing solicitor 43 (73%); the solicitor's client 16 (27%).

Annex B: Project Methodology

- (a) **Stage 1: Definition** Stage 1 of the project was the kick-off phase with the CLSB and HT agreeing a project management approach through a project initiation document. This stage also scoped out the definitions and critical questions to be addressed in the subsequent research phase.
- (b) **Stage 2: Research** Stage 2 involved two simultaneous analytical workstreams undertaken in tandem:
- **Domestic Research:** This phase provided a map of the regulated costs lawyer profession including the size of the profession, the services provided and examples of innovation through desk research, interviews with selected costs lawyers and a profession-wide survey. We used our contacts in the costs lawyer profession and across the legal sector to undertake an in-depth examination of what the profession is currently doing with key stakeholders in the profession, their employers and clients.
 - **International Research:** The objective of this output was to produce insights from other jurisdictions which might inform regulatory policymaking in England and Wales. It also explored where technology might be being used in other jurisdictions to help with pricing or cost management of legal matters. In doing this work we drew on our knowledge of regulation in many other jurisdictions, together with our contacts in key lawyer regulatory bodies and our extensive library of international academic research into legal regulation.
- (c) **Stage 3: Analysis** Following an initial analysis of the material gathered, a brief report was made to the project Challenge Board and the CLSB Board to review the results of the background research and to consider initial conclusions about what this might imply for regulatory change. Following the discussion and feedback, further work was undertaken to develop suggestions for where regulatory change or other action by the CLSB as a regulator could be undertaken that would facilitate innovation in the profession.
- (d) **Stage 4: Drafting and Review** An initial draft report focusing on what the findings meant for regulatory or legislative reform was produced for consideration by the project Challenge Board and the CLSB Board. Their comments were then incorporated into a final report whose objectives are to meet the CLSB's needs in relation to reporting to BEIS and to provide a practical guide to future policy development.

Annex C: Costs Lawyer Data

Where Costs Lawyers work by Organisation Type

Breakdown of Register by Type of Organisation, 2021 Register	No. of CLSB registered Costs Lawyers in this type of organisation	Percentage of Total Costs Lawyers working in this type of organisation
Costs law firm	309	44.3%
Solicitors' firm	284	40.7%
Individual costs lawyer	57	8.2%
ABS	12	1.7%
Insurance	10	1.4%
In administration	9	1.3%
Public sector	6	0.9%
Litigation tech firm/start-up	5	0.7%
Not known	2	0.3%
Consumer action website	1	0.1%
Financial planning	1	0.1%
Legal aid	1	0.1%
Barristers Chambers	1	0.1%
Grand Total	697	100.0%

Annex D: List of Costs Lawyers and Stakeholders Interviewed

Firm

Fletchers

Kain Knight

Bidwell Henderson

Burcher Jennings

Horwich Farrelly

Jim Diamond Costs

Bracewell Costs

Irwin Mitchell

Masters Costs

Civil and Commercial Costs

Integral Legal

Donoghues Legal Costs

Harbour Litigation Funding

Tower Street Financing

Echelon Law

Legal Beagles

Interviewee

Confidential – for CLSB

Annex E: Interviews

Confidential – for CLSB

Annex F: Costs Law Market Data

Confidential – for CLSB