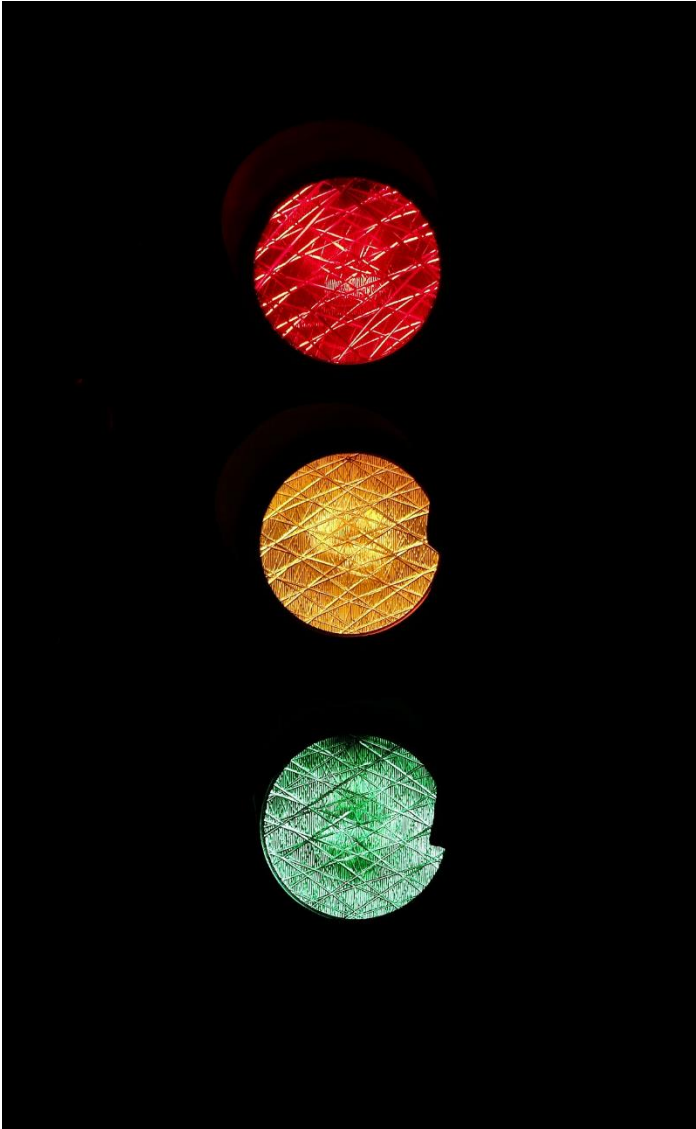

Policy statement on enforcement and sanctions



26 August 2024 (version 3)

Costs Lawyer Standards Board

CLSB
|||

Purpose of this policy statement

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

Purpose of the rules

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

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

Approach to enforcement

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

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

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

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

Mitigation and aggravation

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

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

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

Approach to enforcement relating to competency

Lack of competency while practising

10. In some cases, we might become aware of information that indicates a practitioner does not meet the standards of competency expected of an authorised Costs Lawyer, as set out in the [Costs Lawyer Competency Statement](#).

11. The competency of all Costs Lawyers is assessed at the point when they qualify into the profession, through the Costs Lawyer Qualification. However, a lack of competency could arise during a Costs Lawyer's career if, for example, they:
 - fail to keep their technical knowledge or skills up to date;
 - fail to acquire new skills that are necessary for complying with their regulatory obligations in a changing environment, such as becoming a people or business manager, or taking on a new specialism;
 - misunderstand how the principles of professional conduct should be applied in a novel situation;
 - fail to appreciate the scope of their authorisation as a Costs Lawyer when taking on new work.

12. It is unlikely that competency issues will come to our attention in a vacuum. Usually, we will become aware of a potential lack of competency because it is implicit in, or is indicated by, other outcomes such as a poor client experience or a breach of our regulatory rules. A lack of competency might be indicated by, for example:
 - a formal finding of serious professional negligence against a Costs Lawyer;
 - negative observations made by a judge or the Legal Ombudsman;
 - the nature of a complaint made against a Costs Lawyer;
 - the nature of a disclosure made by a Costs Lawyer;
 - failure to demonstrate compliance with the CPD Rules.

A lack of competency might also be evidenced through the presence of one or more negative behavioural indicators, as set out in the [Competency Statement](#) for each skill competency.

-
13. A potential lack of competency will be considered under the DR&P in the same way as any other conduct issue (and will usually be considered together with any related conduct issues).
 14. Where a lack of competency is identified, we will require the Costs Lawyer to take remedial action to develop their competency and correct the issue. We are likely to do this in one or more of the following ways:
 - by supporting the Costs Lawyer to put in place an informal remediation plan, reporting to us as milestones are completed (with a failure to meet milestones, without good reason, being likely to result in additional measures being imposed);
 - by placing conditions on the Costs Lawyer’s practising certificate requiring specified remedial action to be taken;
 - by placing conditions on the Costs Lawyer’s practising certificate requiring them to refrain from offering certain services or acting for certain types of clients until action has been taken;
 - in very serious cases, by making an interim suspension order under DR&P 4, preventing the Costs Lawyer from practising until action has been taken.
 15. We may impose any appropriate condition on a Costs Lawyer’s practising certificate, but the conditions that are most likely to be imposed to remedy a lack of competency are:
 - completion of relevant training within a prescribed time frame;
 - a period of supervision or oversight of the Costs Lawyer’s practice by a qualified person;
 - a period of monitoring of the Costs Lawyer’s practice by the CLSB, for example through obtaining feedback from clients or managers;
 - a requirement for the Costs Lawyer to align their annual CPD objectives and activities with the relevant competency area;
 - a requirement to report on CPD activity more regularly than the usual annual requirement.

16. The approach taken will depend on the extent, nature and seriousness of the competency issue. The following mitigating and aggravating factors are likely to be most relevant in this context (these draw on the general mitigating and aggravating factors in the table above at paragraph 9).

Less serious/mitigating factor	More serious/aggravating factor
The lack of competency is of low risk to the public interest	The lack of competency is of high risk to the public interest
The lack of competency is of low risk to the reputation of the profession	The lack of competency is of high risk to the reputation of the profession
The lack of competency is of low risk to the administration of justice	The lack of competency is of high risk to the administration of justice
The lack of competency is an isolated incident (unless a very serious one)	There is a pattern of minor or serious competency issues that have not been addressed
The Costs Lawyer has reflected on their training and development needs and undertaken appropriate CPD activities	The Costs Lawyer has failed to consider or address their training and development needs in line with the CPD Rules
The Costs Lawyer shows insight into the issue and is proactive in planning and undertaking remedial action	No genuine insight into the issue has been demonstrated and/or the Costs Lawyer fails to take remediation seriously
The Costs Lawyer self-reports and provides full information	The Costs Lawyer does not collaborate with the CLSB and/or attempts to conceal information

Temporary inability to meet competency requirements

17. We recognise that there may be situations in which a Costs Lawyer is practising but is temporarily not able to meet the standards of competency required, for example due to injury, illness, mental health concerns or a significant change in their personal circumstances. In a situation where there is a risk of a temporary lack of competency, a Costs Lawyer should:

-
- reflect on their capacity to meet the standards of competency required whilst practising;
 - consider any adjustments or assistance that they might need during this time. This could include seeking reasonable adjustments from their organisation for employed Costs Lawyers or arranging supervision by a Costs Lawyer working in another organisation for sole practitioners;
 - if they have been away from practice, consider what steps they will need to take to meet the standards of competency required when they are practising again, for example, completing additional training or updating their technical knowledge and skills.
18. We will not take regulatory action against a Costs Lawyer just because they have a health condition or have experienced a significant temporary change in their personal circumstances. We recognise that many Costs Lawyers will be able to manage the impact of temporary situations or health conditions themselves, by making adjustments to their practice or seeking assistance as necessary.
19. We may require a Costs Lawyer to take remedial action or impose a condition on their practising certificate (as set out in paragraphs 14 and 15) in situations where:
- a temporary lack of competency has been identified;
 - the Costs Lawyer has not taken sufficient steps to address the impact of this; and
 - there has been a serious breach of our rules, or the individual's conduct is of high risk to the public interest or the profession (see paragraphs 7 and 8 above).
20. If you are concerned that you may not be able to fully address the impact of a temporary condition or change in personal circumstances for any reason, you should [contact us](#). We can then work with you to discuss and consider available options.
21. As a Costs Lawyer, you also have access to the support services provided by [LawCare](#). LawCare is the mental wellbeing charity for the legal profession offering

free and confidential emotional support, peer support and resources to those working in the law. If you need support with managing stress, mental wellbeing or other personal challenges, please consider contacting LawCare.

END